1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE
4 RICHARD BOEKEN,)
)
5 PLAINTIFF,)
)
6)
) CASE NO. BC226593
7 VS.)
)
8 PHILIP MORRIS,)
INCORPORATED, A)
9 CORPORATION; INTERNATIONAL)
HOUSE OF PANCAKES)
10 INCORPORATED, A)
CORPORATION.
11)
DEFENDANTS.)
12 _____)
13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
14 WEDNESDAY, APRIL 18TH, 2001
15 APPEARANCES:
16 (FOR PLAINTIFF) LAW OFFICES OF
MICHAEL J. PIUZE
17 11755 WILSHIRE BLVD.
SUITE 1170
18 LOS ANGELES, CA 90025
19 (FOR DEFENDANTS) ARNOLD & PORTER
BY: MAURICE A. LEITER
20 JOHN CARLTON
777 S. FIGUEROA ST.
21 44TH FLOOR
LOS ANGELES, CA 90017
22
LISA C. RIDLEY
23 OFFICIAL REPORTER
600 S. COMMONWEALTH AVE.
24 ROOM 308
LOS ANGELES, CA 90005
25
VOLUME 19A OF
26 PAGES 2759 THROUGH 2848
27
28

1 LOS ANGELES, CALIFORNIA; WEDNESDAY, APRIL 18TH, 2001
2 9:00 A.M.
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE
4
5 (THE FOLLOWING PROCEEDINGS
6 WERE HELD IN OPEN COURT OUT
7 OF THE PRESENCE OF THE JURY:)
8
9 THE COURT: WE ARE ON THE RECORD.
10 COUNSEL ARE PRESENT.
11 WE HAVE RECEIVED A TELEPHONE CALL
12 FROM ALTERNATE NUMBER 3, MR. FLORES.
13 WHAT IS HIS SITUATION?
14 THE COURT LIAISON: THE SITUATION IS THAT
15 HE CALLED THIS MORNING, HE HAS GOT CAR TROUBLE.
16 HIS CAR WAS BROKEN DOWN AND HE WAS GETTING IT TOWED
17 TO HIS MECHANIC AND HE WAS WAITING FOR HIS WIFE, I

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THINK HIS WIFE WAS WITH HIM WITH THE YOUNG CHILDREN
IN THE CAR.
SO IT'S NOT DUE TO ILLNESS. IT'S
DUE TO CAR TROUBLE. HE GAVE ME BOTH HIS CELL PHONE
NUMBER AND HIS HOME PHONE NUMBER TO CALL HIM BACK.
THERE'S ONLY ONE CAR IN THE FAMILY, I UNDERSTAND.
THE COURT: DID HE SAY TO YOU THAT HE
COULDN'T COME THE REST OF THE DAY?
THE COURT LIAISON: HE INDICATED THAT
MAINLY BECAUSE OF THE TIME WAS 9 O'CLOCK WHEN HE
CALLED AND THE CAR WAS BEING TOWED AND HE HAS NO
2760
WAY.
THE COURT: WHAT DO YOU WANT TO DO?
I AM OPEN.
MR. LEITER: WELL, I DON'T HAVE ANY
PARTICULARLY NOVEL IDEAS, BUT OBVIOUSLY THE CHOICES
ARE WE EITHER NOT HAVE TRIAL TODAY OR WE EXCUSE HIM
FROM THE CASE.
MY PERSONAL PREFERENCE WOULD BE TO
EXCUSE HIM FROM THE CASE SO THAT WE DON'T LOSE A
COURT DAY.
HE IS ALTERNATE NUMBER 3. WE
HAVEN'T YET LOST A JUROR, WE ARE NOW IN WEEK THREE
OF TESTIMONY AND WE HAVE FIVE ALTERNATES LEFT.
SO MY PERSONAL PREFERENCE WOULD BE
SIMPLY TO EXCUSE HIM SO THAT WE DON'T LOSE A TRIAL
DAY.
MR. PIUZE: IF THOSE ARE THE TWO CHOICES,
THEN I AM IN WHOLEHEARTED AGREEMENT. I HAVE TWO
EXPERT WITNESSES HERE, ONE FROM PENNSYLVANIA, ONE
FROM WASHINGTON STATE IN THE COURTHOUSE RIGHT NOW.
IF IT'S TRUE THAT HE HAS TO LOSE A
WHOLE DAY, I SAY WE EXCUSE HIM.
I DON'T KNOW WHY THAT'S TRUE. I
DON'T KNOW WHY HE CAN'T GET HERE. GIVEN THE FACT
THAT THERE ARE AT LEAST SEVEN OR EIGHT DEFENSE
ATTORNEYS IN THE ROOM, I DON'T MIND IF ONE GOES
DOWN AND PICKS HIM UP.
THE COURT: OKAY. GIVE HIM A CALL AND
2761
SEE IF THERE'S ANY WAY WE CAN GET HIM HERE.
WE WILL FIND OUT IF WE CAN GET HIM
HERE.
MR. PIUZE: THANK YOU.
MR. LEITER: THANK YOU.
THE COURT: DO YOU ALL WANT TO
PARTICIPATE IN THE PHONE CALL?

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT IN
THE PRESENCE OF THE JURY.)

THE COURT: THANK YOU.
WE HAD A SITUATION WITH ONE OF OUR
JURORS THIS MORNING ON THE FREEWAY.
JUROR FLORES: I APOLOGIZE.
THE COURT: YOU DON'T HAVE TO APOLOGIZE.
WE ARE ALL THANKFUL THAT EVERYTHING WORKED OUT FOR
YOU AND YOUR FAMILY.
AND THE POINT IS THAT WE ARE ALL ON
A JOURNEY TOGETHER, WORKING TOGETHER, AND THE COURT
IS GOING TO WORK WITH OUR JURORS AND ACCOMMODATE

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OUR JURORS AS BEST WE POSSIBLY CAN WHEN SITUATIONS
ARRIVE.
THE THING WE NEED TO DO IS GET THAT
CALL AND YOU DID IMMEDIATELY, AND WE THANK YOU VERY
MUCH FOR DOING THAT, SIR.
ALL RIGHT. OUR JURY PANEL IS WITH
2762
US.
COUNSEL ARE PRESENT AS WELL. OUR
WITNESS IS ON THE STAND.
SIR, YOU UNDERSTAND YOU ARE STILL
UNDER OATH.
THE WITNESS: YES, SIR.
THE COURT: PLEASE BE SEATED.

MARVIN GOLDBERG, PH.D.,
CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN
PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
AND TESTIFIED FURTHER AS FOLLOWS:

CROSS-EXAMINATION (RESUMED)

BY MR. LEITER:
Q. GOOD MORNING, LADIES AND GENTLEMEN.
GOOD MORNING, DR. GOLDBERG.
A. GOOD MORNING.
Q. DR. GOLDBERG, I TOOK MY HANDWRITTEN
SCRATCHES FROM YESTERDAY AND HAD THEM MADE INTO A
POSTER WHICH SHOULD BE A LITTLE BIT EASIER TO READ.
YOU REMEMBER THIS FROM YESTERDAY?
A. YES, I DO.
Q. OKAY.
AND YOU REMEMBER WHEN WE WERE
TALKING ABOUT CIGARETTES, WE READ THE PORTION OF
2763
HIS TESTIMONY, MR. BOEKEN'S TESTIMONY, WHERE HE
USED COOL, SOPHISTICATED, FASHIONABLE ADULTS,
REMEMBER THAT?
A. YES.
Q. AND WE SHORTENED IT FOR PURPOSES OF
MY HANDWRITING, REMEMBER THAT?
A. YES.
Q. DR. GOLDBERG, WOULD YOU AGREE WITH
ME THAT SOME PEOPLE TAKE RISKS IN THEIR LIVES FOR
REASONS THAT HAVE NOTHING TO DO WITH ADVERTISING?
A. IN THEORY, YES.
Q. AND PRACTICE?
A. I AM SURE THERE'S A VARIANCE IN
INDIVIDUALS AND HOW THEY APPROACH RISK, YES.
Q. AND SOME PEOPLE TAKE RISK IN THEIR
LIVES THAT HAVE NOTHING TO DO WITH ADVERTISING IN
ANY FORM, ISN'T THAT RIGHT?
A. THAT CAN HAPPEN, YES.
Q. YESTERDAY, DURING YOUR DIRECT
EXAMINATION, YOU TALKED TO THE JURY ABOUT SOME
DOCUMENTS FROM THE JOHN HILL COLLECTION. REMEMBER
THAT?
A. HILL & KNOWLTON.
Q. YES.
A. YES.
Q. AND THAT COLLECTION WAS MAINTAINED,
I THINK YOU TOLD THE JURY, AT THE UNIVERSITY OF

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28 WISCONSIN IN MADISON. DO YOU REMEMBER THAT?
2764
1 A. YES.
2 Q. AND YOU TOLD THE JURY YOU READ
3 ABOUT 20 DOCUMENTS FROM THAT COLLECTION; IS THAT
4 RIGHT?
5 A. IN THAT ORDER, MAYBE, A LITTLE
6 MORE. ABOUT THAT.
7 Q. WHERE DID YOU GET THE DOCUMENTS?
8 A. INITIALLY FROM A LAW FIRM IN
9 PHILADELPHIA.
10 Q. THAT REPRESENTS PLAINTIFFS?
11 A. YES.
12 Q. IN TOBACCO LAWSUITS?
13 A. YES.
14 Q. AND YOU SAID "INITIALLY." DID YOU
15 GET SOME OTHER DOCUMENTS LATER ON?
16 A. THROUGH MICHAEL PIUZE'S OFFICE.
17 Q. DID YOU EVER GO TO THE ARCHIVES IN
18 MADISON, WISCONSIN?
19 A. NO.
20 Q. DO YOU KNOW HOW MANY DOCUMENTS
21 THERE ARE IN THAT COLLECTION?
22 A. NO.
23 Q. WOULD IT SURPRISE YOU TO LEARN
24 THERE ARE OVER 200,000 PAGES OF DOCUMENTS IN THAT
25 COLLECTION?
26 A. NO.
27 Q. DO YOU REMEMBER HOW MANY DOCUMENTS
28 IN THAT COLLECTION DEAL WITH HILL & KNOWLTON'S WORK
2765
1 FOR THE TOBACCO COMPANIES?
2 A. NO. I KNOW THERE'S AN ON-GOING
3 EFFORT TO, AMONG MANY ACADEMICS, AND THIS HAS BEEN
4 A PART OF IT, TO CULL OUT THE SIGNIFICANT ONES. I
5 AM SURE DAY-TO-DAY DOCUMENTS TALKING ABOUT HIRING,
6 FIRING PEOPLE, ET CETERA, ARE AMONG THEM. AND THE
7 TASK OF ACADEMICS HAS BEEN TO CULL OUT THE
8 SIGNIFICANT ONES, AND THAT'S WHAT WE BROUGHT IN
9 HERE, I GUESS.
10 Q. BUT AS WE SIT HERE TODAY, YOU HAVE
11 JUST REVIEWED THE 20 OR SO DOCUMENTS YOU GOT FROM
12 PLAINTIFFS' LAWYERS; RIGHT?
13 A. AGAIN, I WANT TO SAY, PROBABLY A
14 LITTLE BIT MORE. BUT THERE WEREN'T 200,000.
15 THAT'S STILL THE TASK OF ACADEMICS AHEAD.
16 Q. SOMEWHERE IN THE 20 TO 25 RANGE,
17 DOCUMENTS PROVIDED TO YOU BY PLAINTIFFS' LAWYERS.
18 DO YOU CONSIDER THOSE DOCUMENTS TO
19 BE RELIABLE?
20 A. I CONSIDER THEM TO HAVE BEEN
21 LOCATED BY RELIABLE ACADEMICS AT THE SOURCE THAT
22 JOHN HILL WILLED THEM TO THE UNIVERSITY.
23 Q. DO YOU CONSIDER THE DOCUMENTS THAT
24 YOU GOT TO BE A REPRESENTATIVE SAMPLE?
25 A. I THINK THAT, IF ONE WAS TO TALK
26 ABOUT A REPRESENTATIVE SAMPLE, ONE COULD DRAW FROM
27 EVERY FIFTH DAY AND COME UP WITH A REPRESENTATIVE
28 SAMPLE. ONE COULD DRAW FROM THOSE THAT WERE LONG
2766
1 OR SHORT. THAT'S NOT THE ISSUE.
2 THE ISSUE IS ACADEMICS HAVE CULLED
3 THROUGH THEM TO FIND THOSE THAT ARE RELEVANT TO THE

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4 ISSUE AT HAND. THEY ARE FOCUSED ON THE ISSUE AT
5 HAND.
6 Q. OR YOU COULD LOOK AT ALL THE
7 DOCUMENTS THAT CONCERN THE TOBACCO INDUSTRY; RIGHT?
8 A. THAT IS GOING TO TAKE SOME TIME,
9 BUT SO FAR THEY SEEM TO HAVE COME UP WITH SOME
10 FAIRLY RELEVANT ONES.
11 Q. LET'S TAKE A LOOK AT ONE OF THE
12 FAIRLY RELEVANT ONES THAT YOU SHOWED THE JURY
13 YESTERDAY.
14 REMEMBER THIS ONE? CAN YOU SEE IT?
15 IS MY CHART IN THE WAY?
16 A. I AM TRYING TO FOCUS MY EYES STILL.
17 Q. LET ME SEE IF I CAN MAKE IT A
18 LITTLE MORE FOCUSED.
19 DO YOU REMEMBER THIS ONE?
20 A. YES.
21 Q. DATED DECEMBER 15, 1953?
22 A. YES.
23 Q. AND IT'S ENTITLED "BACKGROUND
24 MATERIAL ON THE CIGARETTE INDUSTRY CLIENT"?
25 A. YES.
26 Q. AND THAT'S ONE OF THE DOCUMENTS YOU
27 SHOWED THE JURY ON YOUR DIRECT EXAMINATION?
28 A. YES.
2767
1 Q. DO YOU KNOW WHO AUTHORED THE
2 DOCUMENT?
3 A. IT IS A MATERIAL CLEARLY REVIEWED
4 BY JOHN HILL, AND THE SPECIFIC, THERE'S NO SPECIFIC
5 PERSON THAT'S PUT A PEN TO IT. BUT IT'S CLEARLY
6 JOHN HILL TALKING ABOUT THE MEETING TO BE COMING
7 UP.
8 Q. THE MEETING TO BE COMING UP?
9 A. NO, THE MEETING THAT -- WELL, THE
10 FIRST SENTENCE SAYS IT, "THE FOLLOWING INFORMATION
11 WAS GIVEN AT THE MEETING THAT JUST OCCURRED.
12 Q. HAVE YOU READ THE WHOLE DOCUMENT?
13 A. YES.
14 Q. IN FACT, IT DOES HAVE A SIGNATURE
15 AT THE END, DOESN'T IT?
16 SOMEBODY BY THE NAME OF BERT C.
17 GOSS. DO YOU KNOW WHO BERT C. GOSS IS?
18 A. IT SLIPS ME FOR THE MOMENT. I
19 THINK HE WAS AN EXECUTIVE OF ONE OF THE CIGARETTE
20 COMPANIES.
21 Q. AND YOU SAID YOU ARE SURE THAT IT'S
22 MATERIAL THAT JOHN HILL REVIEWED. HOW DO YOU KNOW
23 THAT?
24 A. WELL, THE INTERNAL DOCUMENT, IF I
25 CAN SEE IT, TALKS ABOUT THE INTRICACIES OF WHAT
26 WENT ON THERE IN THE MEETING. AND IT'S A
27 REFLECTION OF WHAT THE COMPANY SHOULD DO AND HE WAS
28 THE HEAD OF THE COMPANY AND HE HAD BEEN VERY
2768
1 HEAVILY INVOLVED IN THE WHOLE PROCESS.
2 Q. SO YOU ARE ASSUMING THAT HE MUST
3 HAVE SEEN IT?
4 A. I THINK THAT, IF WE COULD READ
5 THROUGH IT, IT'S EVIDENT THAT HE HAS BEEN A PART OF
6 THIS.
7 Q. NOW, IT SAYS IN THIS FIRST
8 PARAGRAPH:

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9 "THE FOLLOWING INFORMATION
10 WAS GIVEN TO US BY THE PRESIDENTS OF
11 THE LEADING TOBACCO COMPANIES AT THE
12 HOTEL PLAZA THIS MORNING."
13 A. SO HE SAYS "US," HE, JOHN HILL, IN
14 A SENSE, IS THE PRESIDENT OF THE COMPANY, WAS
15 PRESIDENT, AND THERE WAS A MAJOR FORCE IN THIS
16 WHOLE EFFORT.
17 Q. YOU FIGURE HE MUST HAVE SEEN THIS?
18 A. IT WOULD BE HIGHLY UNUSUAL IF HE
19 DIDN'T.
20 Q. (READING)
21 "FOLLOWING INFORMATION WAS
22 GIVEN US BY THE PRESIDENTS OF THE
23 LEADING TOBACCO COMPANIES AT THE HOTEL
24 PLAZA THIS MORNING."
25 AND YOU READ TO THE JURY THIS
26 PORTION OF THIS DOCUMENT, DIDN'T YOU?
27 A. I CAN'T RECALL HOW MUCH WE READ IT.
28 BUT I IMAGINE IF YOU SHOW ME THE REST OF IT, I AM
2769
1 SURE WE READ SOME OF THE HIGHLIGHTED PART.
2 Q. THIS IS MY COPY AND I HAVE
3 HIGHLIGHTED --
4 A. I WILL HAVE TO LOOK BACK AT MINE TO
5 REMEMBER WHAT WE READ.
6 Q. WELL, LET'S TAKE A LOOK AT A COUPLE
7 SECTIONS.
8 THIS IS ON PAGE 2 OF THE DOCUMENT.
9 DO YOU SEE THE HEADING, "THE INDUSTRY'S POSITION"?
10 A. YES.
11 Q. FIRST PARAGRAPH READS: "THE
12 INDUSTRY -- " BY THAT THEY ARE REFERRING TO THE
13 TOBACCO COMPANIES, DO YOU BELIEVE?
14 A. I AM NOT SURE. IT COULD BE JOHN
15 HILL'S OPERATION AS WELL, PROBABLY.
16 Q. PROBABLY THE EXECUTIVES AT THE
17 PLAZA HOTEL THAT DAY?
18 A. YES.
19 Q. (READING)
20 "THE INDUSTRY IS STRONGLY
21 CONVINCED THAT THERE IS NO SOUND
22 SCIENTIFIC BASIS FOR THE CHARGES THAT
23 HAVE BEEN MADE."
24 DO YOU SEE THAT SENTENCE?
25 A. UH-HUH.
26 Q. (READING)
27 "THEY BELIEVE THAT THE MORE
28 SENSATIONAL ACCUSATIONS IN THE RECENT
2770
1 PAPERS WERE PREMATURE AND IN SOME
2 CASES REPRESENT PUBLICITY ISSUES IN
3 THE HOPES OF ATTRACTING FUNDS IN
4 SUPPORT FOR FURTHER RESEARCH."
5 SO THIS IS A DOCUMENT FROM
6 HILL & KNOWLTON REPORTING WHAT HAPPENED AT THE
7 PLAZA HOTEL THAT DAY?
8 A. YES.
9 Q. "THEY POINT OUT," AND "THEY," I
10 ASSUME, MEAN THE TOBACCO COMPANY EXECUTIVES; RIGHT?
11 A. UH-HUH.
12 Q. (READING)
13 "THAT THE NATIONAL CANCER

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INSTITUTE OF THE U.S. PUBLIC HEALTH
ADMINISTRATION, WHICH IS A GOVERNMENT
AGENCY AND SUPPORTED BY CONGRESSIONAL
APPROPRIATIONS, HAS OFFICIALLY REFUTED
THE TIE UP BETWEEN CIGARETTE SMOKING
AND CANCER. NEVERTHELESS, THEY
REALIZE THAT THE INDUSTRY SHOULD NOT
ENGAGE MERELY IN A DEFENSIVE CAMPAIGN,
REPLYING TO AND ANSWERING INDIVIDUAL
RESEARCH PAPERS AND MAGAZINE ARTICLES.
"THEY FEEL THAT THEY SHOULD
SPONSOR A PUBLIC RELATIONS CAMPAIGN
WHICH IS POSITIVE IN NATURE AND
ENTIRELY -- THEY ARE CONFIDENT THEY
WILL SUPPLY US WITH COMPREHENSIVE AND
2771
AUTHORITATIVE SCIENTIFIC MATERIAL
WHICH COMPLETELY REFUTES THE HEALTH
CHARGES."
NOW, YOU TOLD THE JURY YESTERDAY
THAT THIS WAS A DOCUMENT REPORTING WHAT HAPPENED AT
THE PLAZA HOTEL THAT DAY; RIGHT?
A. PART OF WHAT HAPPENED AT THE PLAZA
HOTEL.
Q. AND THIS IS WHAT THE PERSON WHO
WROTE THIS DOCUMENT, MR. GOSS, REPORTED HE HEARD
FROM THE TOBACCO COMPANIES THAT DAY; RIGHT?
A. PART OF IT.
Q. (READING)
"RESPONSE TO QUESTIONS. THE
COMPANY'S REPLY," PRESUMABLY THOSE
WERE QUESTIONS THAT CAME UP AT THE
MEETING, "THAT THEY HAD NO DESIRE TO
SET UP A SMOKESCREEN OR FRONT TYPE OF
ORGANIZATION."
YOU DIDN'T READ THAT SENTENCE TO
THE JURY YESTERDAY, DID YOU?
A. NO. I IMAGINE YOU ARE NOT GOING TO
READ SOME OTHER PARTS, BUT GO AHEAD.
Q. WELL, YOU READ SOME SECTIONS AND I
AM GOING TO FILL IN SOME OTHER SECTIONS.
"THEY ARE PERFECTLY WILLING
TO SPONSOR ANY STATEMENTS THAT MAY BE
ISSUED OR ANY INSTITUTIONAL
2772
ADVERTISING THAT MAY BE RECOMMENDED OR
APPROVED."
NOW, OTHER THAN THE 20 OR 25
DOCUMENTS FROM THE HILL COLLECTION THAT WERE
PROVIDED TO YOU BY PLAINTIFF'S COUNSEL THAT YOU
READ FOR PREPARATION FOR YOUR TESTIMONY, DID YOU DO
AN INVESTIGATION INTO THE ACTIVITIES OF THE TOBACCO
INDUSTRY RESEARCH COMMITTEE THAT WAS FORMED?
A. WHAT DO YOU MEAN BY THAT?
Q. LET ME CLARIFY THE QUESTION.
OTHER THAN READING THOUGH DOCUMENTS
THAT YOU GOT FROM THE PLAINTIFFS' COUNSEL, WHAT DID
YOU DO TO INVESTIGATE WHAT THE T.I.R.C. ACTUALLY
DID?
A. WELL, THEY ARE CERTAINLY MENTIONED
ALONG THE WAY IN THESE DOCUMENTS THAT WE HAVE
REFERRED TO AS THESE CONSENSUS DOCUMENTS AND THAT
THEY PROVIDE TIME LINE AND A DESCRIPTION OF WHAT

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19 THE INSTITUTE -- T.I.R.C. DID, WHAT THEY INTENDED
20 TO DO AND TRACE THE HISTORY OF IT.
21 Q. AND THOSE ARE CALLED "SECONDARY
22 SOURCES"; RIGHT?
23 A. I REFER TO THEM AS CONSENSUS
24 DOCUMENTS WITH THE HUNDREDS OF PEOPLE THAT HAVE PUT
25 THE WORK INTO THEM.
26 Q. YOU HAVEN'T GONE AND RESEARCHED
27 WHAT T.I.R.C. DID, DID YOU?
28 A. I HAVE DONE WHAT MOST RESEARCHERS
2773
1 DO. THEY SPEND LOTS OF TIME IN THE LIBRARY AND
2 MAKE JUDGMENTS, AS I HAVE TO DO ALL THE TIME WHEN I
3 READ PAPERS AS AN EDITORIAL BOARD MEMBER AND COME
4 TO JUDGMENT ON THE SOUNDNESS OF THE RESEARCH. AND
5 IF EVERYBODY HAD TO GO TO THE SOURCE FOR
6 EVERYTHING, SCIENCE COULDN'T ADVANCE VERY FAR.
7 IT'S A CUMULATIVE EFFORT. PEOPLE DO THINGS AND WE
8 HELP EACH OTHER.
9 Q. DOCTOR, YOU ARE HERE TESTIFYING AS
10 AN EXPERT WITNESS; CORRECT?
11 A. THAT IS RIGHT.
12 Q. YOU UNDERSTAND THAT THERE WAS A
13 PUBLIC RELATIONS COMPONENT TO T.I.R.C. AND YOU
14 TESTIFIED ABOUT THAT; RIGHT?
15 A. MORE THAN A COMPONENT, THEY SEEM TO
16 BE THE DOMINANT THING THEY DID.
17 Q. THAT'S REALLY WHAT I AM GETTING TO.
18 THERE WAS ALSO A COMPONENT THAT
19 FUNDED SCIENTIFIC RESEARCH; RIGHT?
20 A. YES, BUT IT SEEMS THAT IT WAS A
21 VERY SMALL COMPONENT IN TERMS OF THEIR OVERALL
22 THRUST, PERHAPS, THAN BUDGET.
23 Q. AND THAT'S EXACTLY WHAT I AM
24 GETTING AT.
25 WHAT IS YOUR BASIS FOR SAYING THAT,
26 WHAT HAVE YOU DONE TO DETERMINE THAT?
27 A. SOME OF THE DOCUMENTS THAT I HAVE
28 READ. THE VERY SMALL PORTION OF THE TOTAL DOLLARS
2774
1 THAT WERE ALLOCATED WENT TO RESEARCH.
2 IN ADDITION, YOU HAVE TO
3 UNDERSTAND, WHEN THE PEOPLE THAT ARE PUT IN CHARGE
4 OF EVEN INITIALLY SELECTING THE SCIENTIFIC PEOPLE
5 ARE THE PUBLIC RELATIONS PEOPLE.
6 WHEN THE PUBLIC RELATIONS PEOPLE GO
7 HAND-IN-HAND WITH THE SCIENTIST TO EACH AND EVERY
8 ONE OF OR MOST OF THE BROADCASTERS, THE "NEW YORK
9 TIMES," THE "READERS DIGEST," IT WASN'T THE
10 SCIENTISTS THAT WENT. THEY WERE -- IF ANYTHING, IT
11 WAS THE PUBLIC RELATIONS FOLKS THAT WENT AND, AT
12 MOST, THEY HELD THE HAND OF THE SCIENTIST.
13 WHY WOULD PUBLIC RELATION PEOPLE GO
14 THERE? BECAUSE IT WAS A DOMINANTLY PUBLIC
15 RELATIONS EFFORT.
16 IT WAS 35 PEOPLE, A GOOD CHUNK OF
17 THE STAFF OF THE HILL & KNOWLTON PEOPLE WERE
18 COMMITTED TO THIS EFFORT.
19 Q. WELL, THAT'S WHAT I AM GETTING AT,
20 DOCTOR.
21 YOU FOCUSED ON THE PUBLIC RELATION
22 ASPECT. HOW DID THE SCIENTIFIC RESEARCH GO ABOUT
23 GETTING FUNDED BY T.I.R.C.?

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24 A. THERE WERE SUPPOSEDLY SOME MONIES
25 COMING FORTH FROM THE CIGARETTE COMPANIES.
26 Q. AND WHO DECIDED WHAT SCIENTIFIC
27 RESEARCH TO FUND?
28 A. THEY DID, EVENTUALLY, PICK A
2775
1 SCIENTIFIC ADVISORY BOARD, YES.
2 Q. WHO WAS ON THE SCIENTIFIC ADVISORY
3 BOARD?
4 A. SCIENTISTS.
5 Q. CAN YOU NAME ANY OF THEM?
6 A. I BELIEVE THE HEAD OF IT WAS A GUY
7 NAMED LITTLE.
8 Q. DO YOU KNOW ANYTHING ABOUT
9 DR. LITTLE?
10 A. I THINK HE WAS A GENETICIST.
11 Q. DO YOU KNOW ANYTHING ABOUT HIS
12 REPUTATION IN THE COMMUNITY WHEN HE WAS SELECTED?
13 A. NO.
14 Q. DO YOU KNOW ANYTHING ABOUT HOW THE
15 SCIENTIFIC ADVISORY BOARD WENT ABOUT EVALUATING
16 REQUESTS FOR FUNDS?
17 A. I HAVE A HUNCH THEY PROCEEDED --
18 Q. I AM NOT ASKING FOR YOUR HUNCH. I
19 AM ASKING FOR WHAT YOU KNOW.
20 A. I HAVE, I BELIEVE, READ SOMETHING,
21 BUT THERE WAS VERY LITTLE THAT DESCRIBED HOW THEY
22 WENT FORTH.
23 Q. VERY LITTLE THAT DESCRIBED HOW THEY
24 WENT FORWARD?
25 A. UH-HUH.
26 Q. YOU DO KNOW THAT THEY FUNDED
27 RESEARCH; RIGHT?
28 A. YES.
2776
1 Q. YOU DO KNOW THAT THEY FUNDED 320
2 MILLION DOLLARS OF RESEARCH, DON'T YOU?
3 A. WELL, IN THE BROAD SCHEME OF
4 THINGS, OF THE BILLIONS AND BILLIONS THAT HAVE BEEN
5 SPENT ON ADVERTISING AND PUBLIC RELATIONS, THAT'S
6 VERY SMALL, OVER THE YEARS.
7 Q. MY QUESTION WAS, DO YOU KNOW THAT
8 THEY FUNDED 320 MILLION DOLLARS' WORTH OF RESEARCH?
9 A. IF YOU TELL ME THAT. I HAVE NOT
10 SEEN THAT FIGURE.
11 Q. DO YOU KNOW THAT THEY FUNDED ABOUT
12 1300 DIFFERENT RESEARCH PROJECTS?
13 A. I DON'T KNOW THAT. AND I'D HAVE TO
14 SEE THE DOCUMENT THAT WOULD MAKE THE CASE.
15 Q. DO YOU KNOW THAT A LOT OF THE
16 RESEARCH THEY FUNDED WAS CO-FUNDED BY UNIVERSITIES
17 AND BY THE FEDERAL GOVERNMENT?
18 A. I AM SURE THAT WOULD BE THE CASE.
19 THEY COULDN'T DO THE RESEARCH BY THEMSELVES.
20 Q. DO YOU KNOW HOW MANY PUBLICATIONS
21 HAD RESULTED FROM FUNDING THROUGH THIS
22 ORGANIZATION?
23 A. NO, I DON'T. BUT I HAVE A HUNCH
24 YOU WILL TELL ME.
25 Q. I AM ABOUT TO TELL YOU THERE ARE
26 6400. HOW MANY OF THEM HAVE YOU READ?
27 A. IF THEY WERE IN THE MEDICAL
28 LITERATURE, IT WOULDN'T HAVE DONE MUCH GOOD BECAUSE

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2777
1 THAT'S NOT MY FIELD OF EXPERTISE.
2 Q. NOT, IS IT.
3 NOW, I AM GOING TO MOVE ON TO A
4 LITTLE DIFFERENT SUBJECT.
5 YOU ALSO SHOWED THE JURY A COUPLE
6 PHILIP MORRIS DOCUMENTS. REMEMBER?
7 A. YES.
8 Q. AND YOU KNOW THAT THERE'S A
9 DEPOSITORY OF PHILIP MORRIS DOCUMENTS THAT WERE
10 PRODUCED IN LITIGATION; RIGHT?
11 A. YES.
12 Q. AND THAT'S LOCATED IN MINNESOTA?
13 A. I DON'T KNOW WHERE IT IS LOCATED
14 RIGHT NOW.
15 Q. AND IT CONTAINS MILLIONS AND
16 MILLIONS OF DOCUMENTS PRODUCED BY PHILIP MORRIS, IS
17 THAT RIGHT?
18 A. A LOT, I KNOW.
19 Q. DO YOU HAVE ANY REASON TO QUESTION
20 THAT IT IS IN THE MILLIONS?
21 A. I HAVE NO IDEA.
22 Q. AND YOU ALSO KNOW THAT PHILIP
23 MORRIS MAINTAINS A WEB SITE WHERE THE PUBLIC CAN
24 ACCESS THOSE DOCUMENTS; CORRECT?
25 A. YES.
26 Q. AND MANY OF THOSE DOCUMENTS THAT
27 ARE ON THE WEB SITE ARE FROM THE ADVERTISING AND
28 MARKETING DEPARTMENT AT PHILIP MORRIS, AREN'T THEY?
2778
1 A. YES.
2 Q. NOW, YOU SHOWED THE JURY A COUPLE
3 OF PHILIP MORRIS DOCUMENTS YESTERDAY. WHERE DID
4 YOU GET THOSE?
5 A. FROM THE OFFICES OF NAZMOTLY
6 (PHONETIC), THE LAWYERS THAT I WORKED WITH IN THE
7 MISSISSIPPI CASE.
8 Q. SO THOSE ARE LAWYERS WHO REPRESENT
9 PLAINTIFFS IN CASES AGAINST TOBACCO COMPANIES?
10 A. THEY WERE REPRESENTING MISSISSIPPI
11 IN THE CASE AGAINST --
12 Q. AGAINST TOBACCO COMPANIES?
13 A. TOBACCO COMPANIES.
14 Q. AND THAT'S WHERE YOU GOT THE
15 DOCUMENTS?
16 A. YES.
17 Q. HOW MUCH TIME HAVE YOU SPENT ON THE
18 WEB SITE RESEARCHING PHILIP MORRIS DOCUMENTS?
19 A. ENOUGH TO KNOW THAT IT'S HARD TO
20 NAVIGATE, NOT VERY EASY.
21 Q. DID YOU GO OUT TO MINNESOTA TO LOOK
22 AT THE DOCUMENTS IN HARD COPY?
23 A. AGAIN, THAT'S WHAT WEB SITES ARE
24 FOR, OSTENSIBLY, AND THAT'S WHAT COLLEAGUES ARE
25 FOR. AND THAT'S WHAT SCIENCE ADVANCES BY VIRTUE OF
26 LOTS OF PEOPLE DOING LOTS OF THINGS AND PEOPLE THAT
27 ARE TRUSTED ON EDITORIAL BOARDS TO READ THEM.
28 Q. BUT NOT YOU?
2779
1 A. CERTAINLY I AM CAPABLE OF MAKING
2 JUDGMENTS AS I AM TRUSTED TO DO SO ALL THE TIME IN
3 READING DOCUMENTS.
4 Q. SO YOU ARE MAKING JUDGMENTS BASED

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5 ON WHAT OTHER PEOPLE HAVE SAID ABOUT THE DOCUMENTS?
6 A. NO. I HAVE LOOKED AT THE DOCUMENTS
7 AND FOUND IT TO BE VERY TELLING, AS WE SAW
8 YESTERDAY. I READ THEM VERY CAREFULLY AND FOUND
9 THEM TO BE TELLING.
10 Q. YOU READ THE DOCUMENTS THAT WERE
11 PROVIDED TO YOU VERY CAREFULLY?
12 A. I THINK THOSE DOCUMENTS ARE QUITE
13 TELLING, YES.
14 Q. NOW, YOU TESTIFIED YESTERDAY, AND
15 CORRECT ME IF I AM WRONG, THAT IN YOUR OPINION,
16 PHILIP MORRIS, WITH THE MARLBORO CAMPAIGN, TARGETED
17 UNDER-AGE MALE SMOKERS; IS THAT RIGHT?
18 A. I BELIEVE THAT'S THE CASE, YES.
19 Q. AND YOU TESTIFIED THAT PHILIP
20 MORRIS DID THAT ALL THE WAY BACK IN THE 1950'S;
21 RIGHT?
22 A. YES.
23 Q. YOU DIDN'T SHOW THE JURY A SINGLE
24 PHILIP MORRIS DOCUMENT, INTERNAL DOCUMENT FROM THE
25 1950'S THAT SAID THAT, DID YOU?
26 A. I FORGET THE DATES OF THE ONES WE
27 DID. BUT I CAN'T, I CAN'T BELIEVE THAT THAT
28 PROCESS WASN'T GOING ON THE ENTIRE TIME, PROBABLY,
2780
1 THE PROCESS OF GOING THROUGH THE MILLIONS OF PIECES
2 OF PAPER THAT ARE PUT OUT THERE, WITHOUT MUCH
3 GUIDANCE, POTENTIALLY WILL FIND SOME GOING FURTHER
4 BACK. BUT THESE ARE VERY TELLING. THE PROCESS OF
5 REACHING THESE PEOPLE DOESN'T CHANGE A DECADE
6 EARLIER.
7 Q. WELL, MY QUESTION WAS, YOU DIDN'T
8 SHOW A SINGLE DOCUMENT FROM THE 1950'S, ANY
9 INTERNAL PHILIP MORRIS DOCUMENT THAT SUPPORTS YOUR
10 OPINION, DID YOU?
11 A. I DON'T REMEMBER THE DATES OF THE
12 ONES WE DID SHOW. YOU WOULD HAVE THE REMIND ME.
13 Q. YOU SHOWED TWO MARKET RESEARCH
14 STUDIES; RIGHT?
15 A. YES.
16 Q. AND THAT WAS FROM 1974 AND ONE WAS
17 FROM 1981; IS THAT CORRECT?
18 A. I DON'T HAVE THEM IN FRONT OF ME.
19 Q. OKAY.
20 YOU SHOWED THE JURY A SINGLE PHILIP
21 MORRIS INTERNAL DOCUMENT FROM THE 1960'S, DIDN'T
22 YOU, THAT SAID THAT PHILIP MORRIS TARGETED THE
23 MARLBORO CAMPAIGN AND UNDER-AGE MAIL SMOKERS, ISN'T
24 THAT RIGHT?
25 A. THE ONLY TIME PEOPLE START SMOKING
26 IS WHEN THEY ARE UNDER 18 OR 19 OR 20, SO YOU CAN'T
27 DO WITHOUT THOSE SMOKERS, WHETHER IT IS IN THE
28 '60'S, '70'S, '80'S OR '90'S.
2781
1 Q. I UNDERSTAND YOUR OPINION, BUT MY
2 QUESTION WAS, YOU DIDN'T SHOW THE JURY A SINGLE
3 INTERNAL PHILIP MORRIS DOCUMENT THAT SUPPORTS YOUR
4 OPINION IN THE 1960'S, DID YOU?
5 A. MY COMMENT IS RELEVANT INSOFAR AS
6 ANYTHING DONE IN THE '60'S PICKS UP ON A PROCESS
7 THAT WOULD BE TRUE AT ANY TIME.
8 Q. AND THAT'S YOUR OPINION?
9 A. DEFINITELY.

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Q. NOW, WE MENTIONED A COUPLE
DOCUMENTS THAT YOU DID SHOW, ONE WAS FROM 1974, AND
ONE WAS FROM 1981. IS THAT CORRECT?
A. AGAIN, YOU WOULD HAVE TO SHOW THEM
TO ME TO TELL ME IF THE DATES ARE CORRECT, I DON'T
HAVE THEM IN FRONT OF ME.
Q. OKAY, LET'S DO THAT.
HERE'S THE FIRST ONE. REMEMBER
THIS ONE, DR. GOLDBERG?
A. THAT DOESN'T SHOW ME VERY MUCH.
JULY '74, YOU WOULD HAVE TO GO ON SO I CAN SEE THE
CONTENTS OF IT.
Q. OKAY.
THIS IS ONE OF THE DOCUMENTS YOU
SHOWED THE JURY YESTERDAY. YOU DON'T RECOGNIZE IT?
A. I RECOGNIZE IT FROM ITS TOTALITY
AND I RECOGNIZE IT WHEN I SEE THE DOCUMENT, BUT YOU
HAVE EXCERPTED ONE PAGE AND IT IS A LITTLE HARD FOR
ME TO FIT IT IN CONTEXT. YES.

2782

Q. THAT'S THE DOCUMENT?
A. YES.
Q. AND I PULLED IT OUT BECAUSE YOU
WERE UNSURE OF THE DATE OF THE DOCUMENT YOU SHOWED
THE JURY. AND IT'S JULY 1974; RIGHT?
A. RIGHT.
Q. OKAY. NOT FROM THE '50'S, NOT FROM
THE '60'S; RIGHT?
DO YOU REMEMBER THIS ONE?
A. I THINK I DO. YES, I KNOW I DO.
BUT I WOULD LIKE, AGAIN, TO SEE THE WHOLE
CONTEXTUAL THING. IT'S HARD TO LOOK AT ON LITTLE
BITS OF AN OVERHEAD AND RELATE IT BACK.
Q. THERE WERE A TOTAL OF THREE SO LET
ME GIVE YOU THE OTHER TWO.
A. THANK YOU.
WHICH ONE WAS THE ONE YOU JUST PUT
UP?
Q. THE ONE WITH THE FOLDED OVER -- THE
ONE YOU ARE HOLDING NOW IS THE ONE I JUST PUT UP.
A. ALL RIGHT.
Q. LOOK FAMILIAR?
A. YES.
Q. THOSE ARE THE DOCUMENTS YOU SHOWED
THE JURY YESTERDAY?
A. YES.
Q. BOTH OF THEM DATED 1981?
A. YES.

2783

Q. AND WHAT WAS SHOWN TO THE JURY IS
THAT THEY CONTAIN WHAT YOU CALL TYPICAL MARKET
RESEARCH; IS THAT CORRECT?
A. THE TABLES WERE TYPICAL TABLES THAT
YOU WOULD SEE IN A MARKETING RESEARCH REPORT.
Q. AND THOSE WERE TABLES THAT INCLUDED
A PREVALENCE, THE AMOUNT OF SMOKING AMONG
UNDER-AGED PEOPLE, ISN'T THAT RIGHT?
A. CORRECT. COMPARED TO OVER IT.
Q. AND FROM THAT YOU CONCLUDE THAT
PHILIP MORRIS MUST HAVE BEEN TARGETING THOSE
PEOPLE, ISN'T THAT RIGHT?
A. THEY CERTAINLY WERE VERY INTERESTED
IN WHAT THEY WERE DOING AND UNLESS THEY HAD SOME

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15 SOCIOLOGY DEPARTMENT, I CAN'T SEE THEM PAYING FOR
16 THIS DATA FOR NOTHING.
17 Q. THAT'S AN INTERESTING QUESTION.
18 THIS DOCUMENT -- THE NEXT ONE WAS
19 WRITTEN BY MYRON JOHNSTON. WHO IS HE?
20 A. RESEARCHER FOR PHILIP MORRIS.
21 Q. DO YOU KNOW WHAT DEPARTMENT HE WAS
22 IN AT PHILIP MORRIS?
23 A. SOME ASPECT OF POPULATION STUDIES.
24 Q. HE WASN'T IN THE MARKETING OR
25 ADVERTISING DEPARTMENT, WAS HE?
26 A. PRETTY CLOSELY ALIGNED AND
27 REPORTING TO THOSE PEOPLE.
28 Q. OH, YEAH? WHERE IS THE MARKETING
2784
1 DEPARTMENT AT PHILIP MORRIS?
2 A. WHERE, PHYSICALLY?
3 Q. YEAH. WHERE, PHYSICALLY?
4 A. I THINK NEW YORK, BUT I AM NOT
5 SURE.
6 Q. WHERE IS MYRON JOHNSTON,
7 PHYSICALLY?
8 A. I DON'T KNOW.
9 Q. WHAT IS A BRAND PLAN?
10 A. A BRAND PLAN?
11 Q. WHAT'S A BRAND PLAN?
12 A. A SET OF STRATEGIES TO ENHANCE THE
13 BRAND AND INSURE ITS SUCCESS WITH THE TARGET
14 AUDIENCE.
15 Q. IT'S AN INTERNAL COMPANY DOCUMENT;
16 RIGHT?
17 A. SOMETIMES MANAGES TO GET EXTERNAL.
18 Q. BUT IT IS USUALLY DONE BY A COMPANY
19 INTERNALLY; RIGHT?
20 A. IT IS A STRATEGIC DOCUMENT
21 TYPICALLY BY A COMPANY, YES.
22 Q. A STRATEGIC DOCUMENT BY A COMPANY,
23 NOT JUST TOBACCO COMPANIES, BUT LOTS OF COMPANIES;
24 RIGHT?
25 A. YES.
26 Q. AND A BRAND PLAN SETS OUT WHAT THE
27 COMPANY'S PLAN IS FOR, SAY, THE NEXT YEAR, FOR
28 ADVERTISING OR MARKETING ITS PRODUCTS; RIGHT?
2785
1 A. RIGHT.
2 Q. AND IT SAYS HOW MUCH MONEY THE
3 COMPANY WANTS TO SPEND ON ADVERTISING A PRODUCT?
4 A. IT TYPICALLY DOES. NOT ALWAYS, BUT
5 TYPICAL.
6 Q. AND YOU SAID IT'S A STRATEGIC
7 DOCUMENT. AND I TAKE IT BY THAT YOU MEAN THAT IT
8 PLAYS OUT A STRATEGY FOR WHAT THE COMPANY HOPES TO
9 ACCOMPLISH WITH ITS ADVERTISING OVER THE UP-COMING
10 YEAR; IS THAT RIGHT?
11 A. WHEN IT IS DONE CORRECTLY.
12 Q. HOW MANY BRAND PLANS FROM PHILIP
13 MORRIS DID YOU SHOW THE JURY?
14 A. I DON'T THINK WE DID.
15 Q. OKAY. LET'S TALK ABOUT MARLBORO
16 ADS THEN.
17 MARLBORO AD CAMPAIGN HAS BEEN A
18 VERY CONSISTENT AD CAMPAIGN OVER THE LAST 40 YEARS,
19 ISN'T THAT WHAT YOU SAID?

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20 A. RIGHT.
21 Q. AND I THINK YOU WOULD AGREE IT'S
22 BEEN ONE OF THE MOST SUCCESSFUL AD CAMPAIGNS IN
23 HISTORY; RIGHT?
24 A. CORRECT.
25 Q. AND THE ADS CONVEY, YOU TOLD THE
26 JURY, INDEPENDENCE, RUGGEDNESS. THIS IS ONE OF THE
27 ONES YOU SHOWED THE JURY?
28 A. WELL, NOW, YOU TALKED ABOUT A
2786
1 CAMPAIGN THAT'S LASTED 40 YEARS. THAT WAS THE
2 PRECURSOR TO THAT CAMPAIGN. THAT'S THE 1957
3 PRECURSOR TO THE -- THAT'S NOT A MARLBORO COWBOY,
4 FOR EXAMPLE.
5 Q. FAIR ENOUGH.
6 PROJECTS RUGGEDNESS, INDEPENDENCE?
7 A. CERTAINLY THAT IS A SQUARE-JAWED
8 MAN, SERIOUS LOOKING, TOUGH LOOKING, NAVY INSIGNIA
9 ON HIS HAND, DASHING CAP. THERE IS A SET OF
10 SYMBOLS THAT HAVE NOT, BY HAPPENSTANCE, ENDED UP IN
11 THAT PICTURE.
12 Q. AND YOU DISCUSSED, IN SOME DETAIL,
13 THE IMAGES IN A LARGE NUMBER OF ADS YESTERDAY. DO
14 YOU REMEMBER THAT?
15 A. IN SOME DETAIL -- SAY THAT AGAIN.
16 Q. AND YOU DISCUSSED WITH THE JURY
17 YOUR IMPRESSION OF SOME OF THE IMAGES IN A NUMBER
18 OF ADS YOU WERE SHOWN; IS THAT RIGHT?
19 A. IT IS MY PROFESSIONAL JUDGMENT THAT
20 THIS IS WHAT THE PHOTOGRAPHER, GUIDED BY THE
21 MARKETER, INTENDED TO CONVEY BY WAY OF THE SYMBOLS
22 AND IMAGES, YES.
23 Q. IT IS YOUR PROFESSIONAL JUDGMENT
24 THAT THIS AD WOULD ALSO ATTRACT MEN IN THEIR 40'S?
25 A. AS I SAID YESTERDAY, THERE, THE
26 CAMPAIGNS WOULD NOT NECESSARILY HAVE PRECLUDED
27 TYPICALLY YOUNG ADULTS, ADULTS. THE QUESTION WE
28 HAVE MOSTLY FOCUSED ON IS WHETHER IT WOULD ATTRACT
2787
1 YOUNG PEOPLE AND THE ANSWER IS YES TO THAT ALSO.
2 Q. I KNOW THE QUESTION YOU FOCUSED ON
3 BUT I WOULD LIKE YOU TO FOCUS ON MY QUESTION.
4 DO YOU THINK THESE ADS WOULD, IN
5 YOUR PROFESSIONAL JUDGMENT, ALSO ATTRACT MEN WHO
6 ARE IN THEIR 40'S?
7 A. THE VERY, VERY FEW, THE HALF OF ONE
8 PERCENT THAT THOUGHT TO START SMOKING AT THAT AGE.
9 Q. IF THE AD IS ONLY DESIGNED FOR
10 STARTING SMOKING, ISN'T THAT RIGHT?
11 A. WELL, YOU DON'T HAVE TO WORRY ABOUT
12 MOST OF THE OTHERS, THEY ARE PRETTY COMMITTED AND
13 VERY FEW OF THEM SWITCH BRANDS.
14 AS I SAID, LESS THAN TEN PERCENT
15 SWITCH BRANDS, AND OF THOSE, LESS THAN SEVEN
16 PERCENT SWITCH COMPANIES. AND IF YOU ARE SWITCHING
17 TO THE SAME COMPANY, PHILIP MORRIS SHOULDN'T CARE
18 MUCH.
19 SEE, YEAH, MIGHT APPEAL TO THEM BUT
20 IT'S BESIDE THE POINT. IT WOULD BE WASTED
21 ADVERTISING. KIND OF LIKE ADVERTISING TO WOMEN.
22 Q. AND DO YOU THINK THIS WOULD BE
23 ATTRACTIVE TO MEN IN THEIR 30'S?
24 A. WOULD IT BE ATTRACTIVE? IT WOULD

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25 CATCH THEIR EYE OUT OF THE CORNER OF THEIR EYE AS
26 WE TALKED ABOUT, LOW INVOLVEMENT PERSUASION,
27 CERTAINLY.
28 Q. AND DO YOU THINK IT WOULD BE
2788
1 ATTRACTIVE TO MEN IN THEIR 20'S?
2 A. DEPENDS WHAT YOU MEAN BY
3 ATTRACTIVE. YES.
4 Q. IN THE SAME SENSE IT WOULD BE
5 ATTRACTIVE TO OTHER PEOPLE?
6 A. WOULD IT CATCH THEIR EYE AND THEY
7 MIGHT REFLECT ON THE FACT THAT IT'S A POSITIVE
8 IMAGE, YES.
9 Q. HOW OLD DOES THIS GUY LOOK TO YOU?
10 A. 35.
11 Q. 35.
12 DO YOU THINK HE MIGHT BE WEARING
13 THE CAP BECAUSE HE IS BALD?
14 A. I DON'T KNOW.
15 MR. PIUZE: YOUNG MAN.
16 Q BY MR. LEITER: HOW OLD DO YOU
17 THINK THIS GUY IS?
18 A. OH, PROBABLY 42.
19 Q. I WON'T GO THROUGH THE REST.
20 A. BUT HE IS AN IDOL, SO IDOLS ARE
21 ALLOWED TO BE OLDER.
22 Q. WHEN DID ERROL FLYNN DIE?
23 A. I DON'T KNOW.
24 I AM NOT SURE IF THAT'S ERROL FLYNN
25 OR SOMEBODY THAT LOOKS LIKE HIM.
26 Q. NOW, RUGGEDNESS AND INDEPENDENCE AS
27 THEMES IN ADVERTISING ARE NOT LIMITED TO TOBACCO
28 ADS, ARE THEY?
2789
1 A. I HAVEN'T DONE A STUDY OF ALL ADS,
2 OF WHERE -- BUT I IMAGINE SOME OF THE COMPANIES
3 SOMEWHERE MIGHT HAVE PICKED UP ON THEM.
4 Q. WESTERN THEMES, COWBOY THEMES ARE
5 NOT LIMITED TO TOBACCO ADS, ARE THEY?
6 A. NOBODY HAS DONE AS GOOD AS
7 MARLBORO.
8 Q. THE ONE ON THE LEFT IS A MARLBORO
9 AD, THE ONE ON THE RIGHT IS A GUESS JEANS ADD.
10 A. IT DOESN'T QUITE MAKE THE ONE ON
11 THE LEFT, I GOT TO TELL YOU.
12 IF YOU THINK THOSE ARE JUXTAPOSED,
13 IT DOESN'T QUITE DO IT.
14 Q. DO YOU KNOW WHETHER MR. BOEKEN
15 BOUGHT GUESS JEANS?
16 A. I HAVE NO IDEA. RALPH LAUREN DOES
17 NOT LOOK LIKE THE MARLBORO MAN.
18 THESE ARE NOT THE EQUIVALENT. THE
19 MARLBORO PEOPLE KNOW WHAT THEY ARE DOING.
20 RALPH LAUREN FOR SAFARI IS A
21 MAKESHIFT COWBOY. HE IS NOT GOING TO COME UP TO
22 THE STANDARDS OF THE MARLBORO MAN. IT IS JUST
23 EVIDENT.
24 Q. DO YOU KNOW WHETHER MR. BOEKEN
25 BOUGHT SAFARI COLOGNE?
26 A. I DON'T. HE WANTED TO BE A COWBOY
27 REAL BAD, I GUESS.
28 Q. ONE MORE.
2790

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DO YOU KNOW IF MR. BOEKEN BOUGHT
HIS COMPUTER EQUIPMENT FROM DIGITAL?
A. I DON'T KNOW. BUT THAT AD DOES
CERTAINLY COME CLOSER TO THE QUALITY OF THE
MARLBORO.
Q. DO YOU THINK DIGITAL WAS TRYING TO
SELL ITS COMPUTER TO MACHO COMPUTER USERS?
A. I DON'T KNOW. I HAVEN'T STUDIED
THAT MARKET PLAN, WHAT THE INTENT OF THEIR
ADVERTISING OR STRATEGY JOB IS.
Q. AD BANS --
A. BY THE WAY, SOMETIMES --
Q. THERE'S NOT A QUESTION PENDING,
DOCTOR.
A. I AM STILL ANSWERING --
THE COURT: SIR, NO QUESTION PENDING.
THE WITNESS: SORRY.
Q BY MR. LEITER: LET'S TALK ABOUT
AD BANS. YOU TALKED YESTERDAY ABOUT BANNING
ADVERTISING IN SOME COUNTRIES.
A. CORRECT.
Q. AND IT WAS YOUR OPINION BASED ON A
STUDY FROM NEW ZEELAND THAT ADVERTISING BANS
REDUCED TOBACCO CONSUMPTION; IS THAT RIGHT?
A. LET ME JUST CLARIFY THAT THE STUDY
WAS NOT A SINGLE STUDY BUT THE REVIEW OF 33
COUNTRIES IN WHICH MULTIPLE STUDIES HAD BEEN DONE.
Q. AND YOU KNOW THAT THAT STUDY HAS
2791
BEEN CRITICIZED?
A. I AM SURE AS MANY STUDIES MIGHT
HAVE BEEN, YES.
Q. BUT YOU DIDN'T TELL THE JURY IT WAS
CRITICIZED, DID YOU?
A. AT THE END OF EVERY SINGLE PIECE OF
RESEARCH, A RESEARCHER IS SUPPOSED ON
SELF-CRITICIZE. THERE ISN'T ANY PIECE OF RESEARCH
I HAVE COME ACROSS THAT IS PERFECT. SO I AM NOT
SURPRISED THAT IT HAS COME TO SOME CRITICISM.
Q. AND YOU DIDN'T TELL JURY THAT THERE
ARE STUDIES THAT GO THE OTHER WAY ON THAT ISSUE,
DID YOU?
A. IF STUDIES GO THE OTHER WAY, THEY
ARE IN THE MINORITY AND I'D HAVE TO REALLY
REANALYZE THEM.
BECAUSE THIS IS A PRETTY
COMPREHENSIVE ANALYSIS. THEY DIDN'T RELY ON ANY
ONE COUNTRY. IT WAS 33 COUNTRIES.
Q. DO YOU WANT TO TAKE A LOOK AT SOME
STUDIES.
THIS IS DEFENSE EXHIBIT 5125.
ARE YOU FAMILIAR WITH THAT STUDY?
A. I DON'T THINK SO.
Q. JUVENILE SMOKING INITIATION IN
ADVERTISING, MARCH 1989?
A. WHO PRODUCED THAT?
MR. PIUZE: YOUR HONOR, IF HE HASN'T READ
2792
OR RELIED OR DONE ANYTHING ON THIS, THEN I WOULD
OBJECT TO HIS BEING CROSS-EXAMINED ON IT.
THE COURT: LAY THE FOUNDATION.
Q BY MR. LEITER: THIS WAS EDITED
AND INTRODUCED BY PROFESSOR J. J. BODDEWYN?

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A. I AM FAMILIAR WITH THAT NAME AND THIS IS AN INDIVIDUAL RATHER THAN AN ENTIRE GOVERNMENT OFFICE. SO THIS INDIVIDUAL IS -- I HAVE LOOKED AT OTHER OF HIS DOCUMENTS AND HE IS CONSISTENTLY CRITICAL, YES.
Q. YOU ARE FAMILIAR WITH DR. BODDEWYN; RIGHT?
A. I NEVER MET HIM BUT I KNOW HE HAS MAINTAINED A CONSISTENTLY CRITICAL POSITION OF WHAT WE REVIEWED YESTERDAY.
Q. (READING)
"THE THREE C.R.U. REPORTS WHICH I HAVE INTRODUCED AND EDITED HAVE SUCCESSFULLY COVERED 6, 10 AND 16 COUNTRIES. THEY ALL DEMONSTRATE MORE OR LESS THE SAME THING; NAMELY, THAT ADVERTISING PLAYS A NEGLIGIBLE ROLE, IF ANY, IN THE INITIATION OF SMOKING BY THE YOUNG, COMPARED WITH THAT OF PERSONAL AND SOCIAL FACTORS, IRRESPECTIVE OF THE PRESENCE OR ABSENCE OF STRICT RESTRICTIONS ON TOBACCO ADVERTISING. IT IS DOUBTFUL

2793

THAT FURTHER SURVEYS CONDUCTED IN COMPARABLE SETTINGS WOULD SIGNIFICANTLY EFFECT THESE FINDINGS."
YOU DISAGREE WITH DR. BODDEWYN; RIGHT?
A. IT WOULD BE NICE IF HE HAD, OTHER THAN HIS OWN PERSON BACKING, THIS IS THE NEW ZEELAND GOVERNMENT. I HAVE NO REASON TO BELIEVE NEW ZEELAND GOVERNMENT HAD ANY PARTICULAR SLANT TO TAKE.
Q. AND HE REVIEWED SMOKING BANS IN SEVERAL COUNTRIES, ISN'T THAT RIGHT?
A. I DON'T KNOW. I HAVEN'T SEEN HIS DOCUMENT.
Q. TAKE A LOOK AT THIS PAGE.
MR. PIUZE: YOUR HONOR, AGAIN, IF HE HASN'T READ IT, REVIEWED IT OR RELIED ON IT, I OBJECT TO IT BEING USED IN CROSS-EXAMINATION.
THE COURT: FAIR ENOUGH, COUNSEL. ANYTHING FURTHER?
MR. LEITER: NO FURTHER FOUNDATION.
THE COURT: ALL RIGHT. IT WILL HAVE TO COME IN THROUGH OTHER MEANS. SUSTAINED. LADIES AND GENTLEMEN, JUST DISREGARD THAT PORTION OF TESTIMONY.
Q BY MR. LEITER: IS THERE OTHER LITERATURE OUT THERE, DOCTOR, THAT BELIEVES THAT AD BANS DO NOT REDUCE SMOKING?

2794

A. THE TOBACCO INDUSTRY HAS PRODUCED A FEW. BUT I THINK, AS I SAID, WE HAVE COME IN WITH, I HAVE COME IN WITH BROAD CONSENSUS REPORTS FROM A WIDE RANGING ARRAY OF PEOPLE FROM OUR SOCIETY AND, INDEED, FROM OUR SOCIETIES, CANADA, NEW ZEELAND, PEOPLE WITH REALLY NO AXE TO GRIND OTHER THAN FINDING TRUTH. AND THE BROAD CONSENSUS HAS BEEN THERE'S A CLEAR LINK BETWEEN ADVERTISING AND THE INDUCTION OF YOUTH INTO SMOKING.
THERE MAY BE SOME DISSIDENT REPORTS

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11 BY SOME INDIVIDUALS HERE AND THERE BUT THEY ARE THE
12 MINORITY AND I AM NOT REALLY THAT AWARE OF THEM.
13 I FOCUS ON THE BROAD BODY OF
14 CONSENSUS RESEARCH.
15 Q. SO OBVIOUSLY THE PEOPLE WITH AN AXE
16 TO GRIND THAT COME OUT DIFFERENTLY, THAT IS YOUR
17 OPINION?
18 A. NO. AS I SAID, I LOOK AT THE BROAD
19 BODY OF RESEARCH AND I KNOW THAT THESE PEOPLE HAVE
20 NO AXE TO GRIND. I DON'T KNOW WHAT AN INDIVIDUAL,
21 WHERE HE IS COMING FROM. THESE ARE, THE INSTITUTE
22 OF MEDICINE, I KNOW, IS LOOKING FOR TRUTH.
23 I DON'T KNOW WHAT -- I NEVER MET
24 BODDWYNE WITHIN, I DON'T KNOW WHAT HE IS DOING OR
25 WHY. HE IS ONE INDIVIDUAL, IT IS NOT THE
26 INSTITUTES OF MEDICINE.
27 Q. I SHOWED YOU ONE YESTERDAY, DEFENSE
28 EXHIBIT 5270.
2795
1 DO YOU REMEMBER SEEING THAT ONE
2 YESTERDAY?
3 A. YES.
4 Q. 1996?
5 A. CORRECT.
6 NO, AGAIN, I AM NOT REAL CLEAR AS
7 TO WHO THE PEOPLE ARE -- YOU ARE SHOWING ME
8 SOMETHING. IS THAT FROM THAT BOOK?
9 Q. YES, IT IS.
10 A. AND I AM NOT SURE WHAT THAT BOOK
11 IS. AND I AM NOT SURE WHAT THE OTHER CHAPTERS ARE.
12 Q. HAVE YOU EVER HEARD OF THE GODDARD
13 REPORT CONDUCTED BY THE OFFICE OF POPULATION AND
14 SURVEYS ON BEHALF OF THE U.K. DEPARTMENT OF HEALTH?
15 A. NO.
16 Q. EVER HEARD OF A RESEARCH REPORT BY
17 CONRAD, FLAY AND HILL, "WHY CHILDREN START SMOKING
18 CIGARETTES" FROM THE "BRITISH JOURNAL OF
19 ADDICTION"?
20 A. I DON'T THINK SO.
21 Q. IS THE "BRITISH JOURNAL OF
22 ADDICTION" A REPUTABLE TREATISE?
23 A. YES.
24 Q. ONE YOU RELY ON IN DOING YOUR WORK?
25 A. MANY, MANY JOURNALS, I MAY HAVE
26 COME ACROSS SOME ARTICLES FROM THERE, I CAN'T, FOR
27 THE MOMENT, REMEMBER.
28 Q. WOULD YOU CONSIDER THE OFFICE OF
2796
1 POPULATION AND CENSUS AND SURVEYS ON BEHALF OF THE
2 U.K. DEPARTMENT OF HEALTH AN ORGANIZATION THAT HAS
3 AN AXE TO GRIND IN FAVOR OF THE TOBACCO INDUSTRY?
4 A. ON THE FACE OF IT, NO.
5 I DON'T KNOW WHERE THIS IS COMING
6 FROM. CAN YOU GIVE ME SOME IDEA WHAT -- YOU HAVE
7 SHOWN ME A PARAGRAPH OUT OF WHAT, WHERE?
8 WHAT IS THAT BOOK? IT'S A COVER OF
9 THE BOOK.
10 Q. A COLLECTION OF SEMINAL PAPERS.
11 WHAT ARE SEMINAL PAPERS? WE TALKED ABOUT THIS
12 YESTERDAY.
13 A. MR. LUIK AND WATERSON SAY THEY ARE
14 SEMINAL, BUT WHO ARE THEY?
15 Q. YOU DON'T KNOW WHO THEY ARE?

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A. NO.
Q. YOU DON'T CARE WHAT THEY HAVE TO SAY?
A. NO, I REALLY WANT TO CARE WHAT THEIR CREDENTIALS ARE. THEY MAY BE FINE MEN. I WOULD LIKE TO KNOW WHAT THEIR CREDENTIALS ARE.
Q. DR. GOLDBERG, TEENAGERS ALWAYS WANT TO BE GROWN UP, DON'T THEY?
A. TEENAGERS HAVE A MOTIVE TO WANT TO APPEAR OLDER AND BE A LITTLE OLDER THAN THEY ARE, SO A 15-YEAR-OLD WANTS TO BE 18. I DON'T THINK A 15-YEAR-OLD WANTS TO BE 30.
Q. AND IF THE PRODUCT IS USED BY

2797

ADULTS, SOME KIDS ARE GOING TO WANT TO USE THAT PRODUCT; RIGHT?
A. IF A PRODUCT IS PORTRAYED AS GLAMOROUS.
Q. YOU DIDN'T ANSWER MY QUESTION. MY QUESTION, IF A PRODUCT IS USED BY ADULTS, SOME KIDS ARE GOING TO WANT TO USE THAT PRODUCT?
A. MY ANSWER IS WHICH ADULTS?
Q. I AM ASKING YOU.
A. WELL, I AM TRYING TO ANSWER IT. IF THE ADULTS ARE PERCEIVED AS GLAMOROUS, CELEBRITY, FOR EXAMPLE, A FOOTBALL IDOL, A MOVIE IDOL, VERY READILY. BUT IF THE ADULT IS YOUR UNCLE HARRY WHO IS AN AVERAGE GUY, PROBABLY NOT.
Q. AND THAT'S YOUR OPINION OF WHAT THE SCIENTIFIC LITERATURE SUPPORTS; RIGHT?
A. WELL, THERE'S A BROAD RANGE OF SCIENTIFIC LITERATURE. YOU WOULD HAVE TO BREAK IT DOWN AS TO WHAT YOU ARE TALKING ABOUT.
Q. LET'S TALK ABOUT THE FEDERAL TRADE COMMISSION.
WE TALKED ABOUT LOW TAR CIGARETTES IN YOUR TESTIMONY. DO YOU REMEMBER THAT?
A. IN THE ADVERTISING FOR AND AGAINST THEM, YES.
Q. AND YOU TALKED ABOUT FOCUS GROUPS YOU CONDUCTED; RIGHT?

2798

A. YES.
Q. AND YOU TALKED ABOUT HOW THOSE PEOPLE WERE RESISTANT TO THE NOTION THAT LOW TAR CIGARETTES MAY NOT BE ANY SAFER THAN REGULAR CIGARETTES, YOU REMEMBER THAT TESTIMONY?
A. AS I SAID YESTERDAY, IT PROVIDED THE IMPETUS FOR US TO GO AHEAD WITH A LARGE SCALE STUDY, YES.
Q. NOW, THE FEDERAL TRADE COMMISSION MANDATES TAR AND NICOTINE LEVELS ON CIGARETTE ADS, DON'T THEY?
A. YES, THEY DO.
Q. AFTER MANY YEARS?
A. I GUESS SO.
Q. AND THOSE LEVELS ARE THERE, SAYS THE F.T.C., TO PROVIDE A BASE OF COMPARISON BETWEEN BRANDS; RIGHT?
A. I DON'T KNOW WHAT THEY SAY. IN FACT, I THINK THEY SAY THAT THEY ARE NOT INTENDED AS A COMPARISON, THEY ARE JUST THERE FOR THE

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ABSOLUTE NUMBERS ON EACH ONE, THEY ARE NOT INTENDED
AS COMPARISON.
Q. THEY ARE NOT INTENDED AS
COMPARISON, THEY ARE INTENDED TO -- PLEASE LET ME
FINISH.
A. I THOUGHT I WAS CLARIFYING MY
ANSWER.
Q. THEY ARE THERE TO TELL THE SMOKERS
2799
HOW MUCH TAR AND NICOTINE THE SMOKER IS GOING TO
GET?
A. IN A GIVEN TIME, ON A GIVEN
CIGARETTE.
CAN I CLARIFY THAT ANSWER?
Q. PLEASE.
A. THEY ARE INTENDED TO CONVEY THE
NUMBERS THAT WERE GENERATED IN THE SMOKING MACHINES
THAT TEST FOR THE TAR AND NICOTINE. THAT'S NOT
NECESSARILY WHAT THE SMOKER WILL GET.
Q. RECOGNIZING THAT SMOKERS DON'T GET,
NECESSARILY, THE NUMBERS THAT ARE MEASURED FROM THE
MACHINE; RIGHT?
A. I DON'T KNOW WHO RECOGNIZE THAT.
Q. FEDERAL TRADE COMMISSION PRESS
RELEASE, AUGUST 1, 1967, DEFENSE EXHIBIT 2397, PAGE
2:
"IN DETERMINING THE TESTING
METHOD, THE COMMISSION HAS NOT
ATTEMPTED TO GAUGE THE TEST TO THE
AMOUNT OF SMOKE OR TAR IN NICOTINE
WHICH THE AVERAGE SMOKER WILL DRAW
FROM ANY PARTICULAR CIGARETTE.
"NO TWO HUMAN SMOKERS SMOKE
IN THE SAME WAY. NO INDIVIDUAL SMOKER
ALWAYS SMOKES IN THE SAME FASHION.
THE SPEED AT WHICH ONE SMOKES VARIES
BOTH AMONG SMOKERS AND USUALLY ALSO
2800
VARIES WITH THE SAME INDIVIDUAL UNDER
DIFFERENT CIRCUMSTANCES EVEN WITHIN
THE SAME DAY. SOME TAKE LONG PUFFS OR
DRAWS, SOME TAKE SHORT PUFFS. THAT
VARIATION AFFECTS THE TAR AND NICOTINE
QUANTITY IN THE SMOKE GENERATED."
Q. THAT'S THE F.T.C.; RIGHT?
A. YES. THERE'S NOTHING THERE ABOUT
VENT HOLES, HOWEVER.
Q. NOW, WHEN YOU TALKED ABOUT THOSE
FOCUS GROUPS BEING RESISTANT TO THE NOTION THAT LOW
TAR CIGARETTES MAY NOT ACTUALLY BE ANY SAFER --
A. BY THE WAY, IT IS NOT JUST THE
FOCUS GROUPS. WE HAVE DONE BROAD SURVEYS,
NATIONALLY, PEOPLE ARE --
Q. FAIR ENOUGH.
HERE'S MY QUESTION.
YOU HAVEN'T STUDIED WHAT THE
SCIENTIFIC COMMUNITY FELT ABOUT THE USE OF LOW TAR
CIGARETTES IN THE 1950'S, DID YOU?
A. IN THE 1950'S?
WHAT THE SCIENTIFIC COMMUNITY
BELIEVED ABOUT LOW TAR CIGARETTES IN THE 1950'S?
Q. YES.
A. IT WAS IN THE 1950'S THAT THE FIRST

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26 LINKAGES OF CIGARETTES AND TAR AND NICOTINE, TAR
27 AND CANCER WERE GENERATED. AND THAT WAS THE
28 BEGINNING OF THE GENESIS FOR THE HILL & KNOWLTON
2801
1 EFFORT.
2 Q. MY QUESTION, DOCTOR, WAS, YOU
3 HAVEN'T STUDIED WHAT THE GOVERNMENT AND THE
4 SCIENTIFIC COMMUNITY WERE TELLING THE PUBLIC ABOUT
5 LOW TAR CIGARETTES IN THE '50'S OR THE '60'S OR THE
6 '70'S OR THE '80'S, HAVE YOU?
7 A. I AM NOT SURE I UNDERSTAND YOUR
8 QUESTION.
9 THE GOVERNMENT AND WHO?
10 Q. COMMUNITY, AMERICAN CANCER SOCIETY,
11 AMERICAN HEART ASSOCIATION, WHAT THEY WERE TELLING
12 THE PUBLIC ABOUT LOW TAR CIGARETTES IN THE '50'S,
13 THE '60'S, THE '70'S, HAVE YOU STUDIED THAT?
14 A. OVER, AGAIN, THESE DOCUMENTS REFER
15 TO THEM OCCASIONALLY. THEY REFER TO THEIR COMMENTS
16 OCCASIONALLY.
17 Q. LIKE THE SURGEON GENERAL REPORT
18 THAT YOU REFERRED TO?
19 A. YES.
20 Q. HERE'S THE SURGEON GENERAL'S REPORT
21 FROM 1981. "HEALTH CONSEQUENCES OF SMOKING, A
22 REPORT FROM THE SURGEON GENERAL."
23 "THE HEALTH RISKS OF
24 CIGARETTE SMOKING CAN ONLY BE
25 ELIMINATED BY QUITTING. FOR THOSE WHO
26 CONTINUE TO SMOKE, SOME RISK REDUCTION
27 MAY RESULT FROM A SWITCH TO LOWER TAR
28 AND NICOTINE CIGARETTES PROVIDED THAT
2802
1 NO COMPENSATORY CHANGES IN STYLE OF
2 SMOKING OCCUR."
3 A. WOULD THAT THE TOBACCO COMPANIES
4 HAVE ADVERTISED THAT AS MUCH AS THEY ADVERTISE
5 THEIR LIGHT CIGARETTES.
6 Q. WAS THAT ANY RESPONSE TO A
7 QUESTION, DOCTOR?
8 A. YOU ASKED, I PRESUME YOU PUT IT UP
9 THERE FOR A COMMENT.
10 Q. 1980, SURGEON GENERAL'S REPORT
11 FOCUSED ON WOMEN.
12 "THE USE OF FILTER
13 CIGARETTES AND CIGARETTES WITH LOWER
14 LEVEL OF TAR AND NICOTINE BY WOMEN IS
15 CORRELATED WITH A LOWER RISK OF CANCER
16 AT THE LUNG AND LARYNX COMPARED TO THE
17 USE OF HIGH TAR AND NICOTINE OR
18 UNFILTERED CIGARETTES. THE RISK
19 SUPPOSED BY SMOKING LOW TAR
20 CIGARETTES, HOWEVER, CLEARLY GREATER
21 THAN THAT AMONG FEMALES WHO NEVER
22 SMOKED."
23 IS THAT WHAT THE SURGEON GENERAL
24 SAID?
25 A. IF THAT'S THE SURGEON GENERAL'S
26 REPORT, I PRESUME IT IS.
27 Q. DO YOU KNOW WHAT THE AMERICAN
28 CANCER SOCIETY WAS TELLING THE PUBLIC ABOUT LOW TAR
2803
1 CIGARETTES IN 1988?

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A. NO, BUT THEY WERE PROBABLY FOLLOWING THE MACHINE'S, GUIDELINES.
Q. (READING)
"RESEARCH HAS SHOWN THAT THERE IS NO SUCH THING AS A SAFE CIGARETTE. BUT THAT THOSE WHO ARE NOT YET ABLE TO QUIT WOULD BE WELL-ADVISED TO SWITCH TO BRANDS WITH THE LOWEST POSSIBLE TAR AND NICOTINE CONTENT. MOREOVER, LOW T.N. SMOKERS," I ASSUME THAT MEANS TAR AND NICOTINE, "FIND IT EASIER TO QUIT ALL TOGETHER THAN HIGH TAR AND NICOTINE SMOKERS."
A. WAS THAT A QUESTION?
Q. DID I READ THAT PROPERLY?
JUST A COUPLE MORE QUESTIONS, DOCTOR.
YOU TESTIFIED ABOUT SOMETHING CALLED THE TRUTH EFFECT.
A. YES.
Q. WHAT IS THAT?
A. IF SOMETHING IS STATED OVER AND OVER AND OVER AGAIN, WHETHER IT IS TRUE OR FALSE TO BEGIN WITH, ESPECIALLY UNDER CONDITIONS WHERE PEOPLE AREN'T PAYING A LOT OF ATTENTION, PEOPLE WILL COME TO ACCEPT IT AS MORE LIKELY TO BE TRUE.
Q. AND THAT APPLIES TO SLOGANS AND

2804

ADVERTISING; RIGHT?
A. WHERE THEY DON'T GENERATE A LOT OF ATTENTION.
Q. BUT IT IS NOT LIMITED TO SLOGANS AND ADVERTISING, IS IT?
A. ANY ASPECT OF OUR ENVIRONMENT, MARLBORO COWBOY, FOR EXAMPLE, THAT IS, THAT PERMEATES, PERMEATES THAT ENVIRONMENT, TAKES ON A FAMILIARITY, THAT GENERATES A LEVEL OF COMFORT, THAT GENERATES A SENSE OF IT'S ALWAYS BEEN THERE, MAYBE IT'S RIGHT.
Q. AND THAT EFFECT CAN APPLY TO OTHER STATEMENTS THAT PEOPLE HEAR OVER AND OVER AGAIN FROM DIFFERENT MEDIA OVER TIME; CORRECT?
A. ONLY WHERE THEY INVOLVE, WHAT WE CALL, LOW INVOLVEMENT, THAT IS TO SAY, IF I REALLY GET YOUR ATTENTION AND WE SAW AN AD YESTERDAY THAT DID, PHILIP MORRIS TAKES THE FEAR OUT OF SMOKING. THAT GENERATED A LOT OF ATTENTION.
IN FACT, THERE'S EVIDENCE THAT IT WORRIED PHILIP MORRIS, IT WAS GETTING TOO MUCH ATTENTION.
PHILIP MORRIS TAKES THE WORRY OUT OF SMOKE, TAKES THE FEAR OUT OF SMOKING, THAT WAS IN 1953. THAT'S WHEN PEOPLE WERE STARTING TO LINK CANCER AND CIGARETTES.
"PHILIP MORRIS TAKES THE FEAR OUT OF SMOKING," THEY DROPPED THAT REAL FAST. YOU

2805

COULDN'T REPEAT THAT OVER AND OVER AGAIN AND GET PEOPLE TO SAY, OH, THAT'S TRUE, BECAUSE THEY THINK ABOUT IT TOO MUCH.
IT'S ONLY WHEN IT IS IN THE BACKGROUND AND YOU DON'T THINK ABOUT IT VERY MUCH.
Q. AND THE TRUTH EFFECT CAN APPLY TO

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7 STATEMENTS THAT PEOPLE HEAR OVER AND OVER AGAIN,
8 EVEN IF IT IS NOT IN ADVERTISING?
9 A. IT DEPENDS ON THE STATEMENT.
10 AGAIN, A STATEMENT THAT IS IN THE BACKGROUND THAT
11 WOULDN'T DRAW ATTENTION MAY BE TRUE. BUT NOT
12 STATEMENTS THAT ARE FRONT AND CENTER AND GET YOU TO
13 THINK ABOUT THEM.
14 Q. SO THE WORST THING YOU CAN DO IS
15 TELL SOMEBODY SOMETHING STRAIGHT UP FRONT?
16 A. IT DEPENDS WHAT IT IS. YOU WILL
17 HAVE TO TELL ME.
18 MR. LEITER: THAT'S ALL I HAVE.
19 THE COURT: ALL RIGHT. THANK YOU,
20 COUNSEL.
21 MR. PIUZE: I AM READY TO GO. SHOULD I
22 GO NOW?
23 THE COURT: REDIRECT.
24 MR. PIUZE: YES.
25 THE COURT: PLEASE.
26 /// /// ///
27 /// /// ///
28 /// /// ///
2806
1 REDIRECT EXAMINATION
2
3 BY MR. PIUZE:
4 Q. DO YOU KNOW WHAT NIKE IS?
5 A. IT'S A BRAND OF RUNNING SHOES.
6 Q. YEAH.
7 IF YOU ASKED A KID WHY ARE YOU
8 BUYING NIKES, AND THE KID SAID BECAUSE ALL MY
9 FRIENDS GOT NIKES; WITH ME SO FAR?
10 A. YEAH.
11 Q. I WANT TO KNOW WHY HIS FRIENDS HAVE
12 NIKES.
13 A. BECAUSE THEY SAW MICHAEL JORDAN
14 HAVE NIKES ON T.V. OR SOMEWHERE. THAT'S -- WE
15 TALKED YESTERDAY, IT'S A FANCY WORD, MEDIATED, BUT
16 THAT'S WHAT WE MEAN. WHAT ARE THE KIDS DOING, THEY
17 ARE TRANSMITTING THE IMPACT OF TELEVISION.
18 Q. THE FANCY WORD "MEDIATED" MEANS
19 WHAT, JUST A BRIEF, TWO SENTENCE DESCRIPTION.
20 A. IT TRANSMITS, FACILITATES, MAKES IT
21 POSSIBLE TO HAPPEN.
22 WE ALL DON'T LIVE IN A VACUUM. WE
23 USED TO THINK THAT WHEN T.V. JUST STARTED,
24 ADVERTISERS, AND THE T.V. CRITICS ARE SAYING WE ARE
25 GOING TO BE LIKE ROBOTS, THEY ARE GOING TO TELL US
26 TO DO SOMETHING, WE WILL RUN DO IT. THEN WE
27 UNDERSTOOD, HALFWAY ALONG, THAT'S NOT GOING TO
28 HAPPEN. THE IMPORTANT OPINION, THE FINE LEADERS
2807
1 ARE GOING TO TELL US WHAT TO DO. THEY WILL WATCH
2 THE T.V., TELL US WHAT TO DO.
3 NO, WHAT HAPPENS, YOU GET TOGETHER,
4 WE ARE ALL SOCIAL BEINGS, YOU GET TOGETHER WITH
5 OTHERS, YOU TALK AND YOU SAY, DID YOU SEE THAT T.V.
6 PROGRAM LAST NIGHT, DID YOU LIKE IT, DID YOU SEE
7 THAT PERSON OVER THERE, DON'T YOU FIND THAT THEY
8 ARE ATTRACTIVE.
9 THERE'S NOBODY WITH A GUN TO THE
10 OTHER PEOPLE. YOU CHAT AMONG PEOPLE AND YOU
11 REFLECT ON THE ENVIRONMENT AROUND YOU.

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ONE PART OF THE ENVIRONMENT IS
MICHAEL JORDAN AND MARLBORO.
Q. LET'S STAY AWAY FROM MARLBOROS FOR
A MINUTE. LET'S JUST STAY AWAY FROM CIGARETTES. I
JUST WANT TO TALK ABOUT NIKES A LITTLE BIT.
IF I TALKED TO JOHNNY AND I SAY,
JOHNNY, HOW COME YOU ARE WEARING NIKES AND I HAVE
TAKEN A SURVEY AND I SAY, JOHNNY, HOW COME YOU ARE
WEARING NIKES? AND HE SAYS, WELL, BECAUSE BILLY IS
WEARING THEM. NOW, DOES THAT MEAN MICHAEL JORDAN
GOT THAT HUNDRED MILLION BUCKS FOR NOTHING?
A. YOU KNOW, THE PROBLEM IS RELYING ON
PEOPLE TO BE THEIR OWN SOCIAL SCIENTISTS. YOU HAVE
TO BE CAREFUL.
THEY CAN ONLY TELL YOU SO MUCH
ABOUT THEIR BEHAVIOR AND USUALLY IT'S THEIR
IMMEDIATE ENVIRONMENT. THEY DON'T REFLECT BACK ON
2808
WHAT HAPPENED BEFORE THAT. THEY DON'T REMEMBER.
Q. SO WHERE I WAS GOING WITH THIS IS,
IF I SAY TO THIS KID, WHY ARE YOU WEARING THOSE
NIKES, AND HE SAYS BECAUSE MY FRIEND WORE THEM OR
MY SIX FRIENDS WORE THEM, AND I AM TELLING YOU THAT
NIKE BUILT AN ADVERTISING CAMPAIGN AROUND MICHAEL
JORDAN FOR OVER TEN YEARS, DO YOU THINK IT'S A
COINCIDENCE THAT THESE KIDS ARE WEARING NIKES AND
MICHAEL JORDAN IS WEARING NIKES?
A. NO, EVERY PENNY OF THAT WAS WELL
SPENT, EVERY PENNY.
Q. AND IF I WENT TO TIGER WOODS AND
BUICKS OR WHATEVER THE 99 THINGS HE IS ADVERTISING
NOW, SAME ISSUES?
A. ABSOLUTELY.
Q. NOW, LET'S TALK ABOUT THE COWBOY
FOR A SECOND.
I DON'T WANT TO PUT ANYTHING UP
THERE RIGHT NOW. BUT I AM JUST REMEMBERING RALPH
LAUREN ON THE ONE SIDE AND THE MARLBORO COWBOY ON
THE OTHER SIDE. HAVE YOU EVER HEARD THE TERM
"IMITATION IS THE MOST SINCERE FORM OF FLATTERY"?
A. RIGHT.
Q. WHAT DOES THAT MEAN, "IMITATION IS
THE MOST SINCERE FORM OF FLATTERY"?
A. IF YOU COPY SOMEONE, YOU MUST
BELIEVE THAT THEY ARE DOING A VERY GOOD JOB AND YOU
WOULD LIKE TO BE LIKE THEM.
2809
Q. YOU HAVE ALREADY SAID, I BELIEVE,
THAT THE MARLBORO COWBOY ADVERTISING CAMPAIGN IS
ONE OF THE MOST SUCCESSFUL IN HISTORY, IN THE
UNIVERSE?
A. NEXT TO COKE, MARLBORO IS THE MOST
RECOGNIZED BRAND AROUND THE WORLD.
I STUMBLED AROUND A CORNER IN
HANOI, I WAS IN VIETNAM A YEAR AGO, THERE WAS A
LITTLE SHOP, RED AND WHITE LITTLE MOTOR SCOOTERS,
RED AND WHITE. JUST SURPRISING.
Q. SO IF DIGITAL COMPUTER EQUIPMENT
DECIDES TO START USING COWBOYS, I AM PUTTING IT TO
YOU, WOULD THAT BE A SIGN OF "IMITATION IS THE MOST
SINCERE FORM OF FLATTERY"?
A. YES. AND AS A MATTER OF FACT,
THERE'S SOMETIMES A WILLINGNESS TO DO KIND OF, IN A

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17 SENSE, STEEL THE THUNDER. IF EVERYBODY IS LOOKING
18 AT THOSE HORSES, MAYBE THEY WILL LOOK AT OUR
19 HORSES.
20 GETTING ATTENTION IS A REAL
21 CHALLENGE IN ADVERTISING. THERE IS SO MUCH
22 ADVERTISING. THE ISSUE OF CLUTTER IS IMPORTANT. A
23 CLUTTERED ENVIRONMENT, AND WHAT STANDS OUT,
24 SOMETIMES, IS A SUCCESSFUL CAMPAIGN. WE WILL RIDE
25 ON THEIR SHOULDERS.
26 Q. THIS IS A BIG JUMP TO A DIFFERENT
27 SUBJECT NOW.
28 WE DID LOOK AT SOME INDUSTRY
2810
1 DOCUMENTS FROM THE HILL COLLECTION YESTERDAY. YOU
2 WERE ASKED A LITTLE BIT ABOUT IT TODAY. YOU WERE
3 ASKED, GEE, DO YOU KNOW WHAT THE TOBACCO INSTITUTE
4 AND THE TOBACCO INDUSTRY RESEARCH COMMITTEE, DID
5 YOU KNOW THEY FUNDED ALL OF THESE STUDIES HERE, AND
6 DID YOU KNOW THAT IN TEN YEARS, THEY SPENT 30
7 MILLION DOLLARS FOR RESEARCH FOR HEALTH OF THEIR
8 CONSUMERS, THREE MILLION BUCKS A YEAR, AND IN ONE
9 YEAR, THEY SPENT 300 MILLION BUCKS TO TEST THE
10 STUFF THAT THEY WERE SPENDING THREE MILLION DOLLARS
11 A YEAR TO RESEARCH IT. DID YOU KNOW THAT?
12 A. THIS IS A PHILIP MORRIS EXECUTIVE
13 SAYING THIS.
14 Q. DID YOU KNOW THAT?
15 A. YES, I READ THAT AND WAS AMAZED TO
16 SEE A PHILIP MORRIS EXECUTIVE SAYING IT.
17 Q. SO NOW I AM SAYING TO YOU, THIS
18 MORNING, OKAY, SO THEY DID SOME STUDIES, DOES THAT
19 CHANGE ANY OF THE OPINIONS YOU GAVE YESTERDAY?
20 A. IT REMINDS ME OF WHAT IS, WHAT IS A
21 PUBLIC RELATIONS EFFORT RIGHT NOW THAT THERE IS A
22 CAMPAIGN AFOOT THAT --
23 MR. LEITER: OBJECTION, THIS IS
24 NONRESPONSIVE.
25 THE COURT: SUSTAINED.
26 Q BY MR. PIUZE: YOU KNOW WHAT, I
27 DON'T WANT TO TALK ABOUT PHILIP MORRIS' CURRENT
28 PUBLIC RELATIONS. LET'S LEAVE THAT ALONE. OKAY?
2811
1 PLEASE.
2 LET'S JUST TALK ABOUT THEIR PAST
3 PUBLIC RELATIONS.
4 THERE'S ANOTHER DOCUMENT YOU SAW
5 YESTERDAY FROM THE COLLECTION, NOT JUST, I AM JUST
6 LOOKING AT THIS.
7 "THE INSTITUTE'S POSITION
8 ON ALL SUCH MATTERS SHOULD BE THAT IT
9 HAS NOT BEEN PROVED THAT TOBACCO WAS A
10 HEALTH HAZARD. IT'S USED AS A
11 UNIVERSAL PLEASURE, RELAXATION, MANY
12 HUNDREDS OF THOUSANDS OF PEOPLE DEPEND
13 ON IT FOR THEIR LIVELIHOOD, AND THAT
14 ANY STEP IN THE DIRECTION OF
15 DISCOURAGING CONSUMPTION OF TOBACCO IS
16 UNJUSTIFIED AND HARMFUL."
17 NOW, I AM PUTTING IT TO YOU AGAIN,
18 SO SOME MONEY WAS SPENT ON RESEARCH AND THEY ARE
19 AFRAID OF PUTTING TOBACCO FARMERS OUT OF BUSINESS
20 SO THEY DIDN'T WANT TO HAVE ANYTHING HARMFUL SAID
21 ABOUT THEM, BUT I AM TELLING YOU MONEY WAS SPENT ON

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22 RESEARCH. DOES THAT CHANGE ANY OF YOUR OPINIONS?
23 A. WELL, WHEN I SEE THE WORDS "THE
24 INSTITUTE'S POSITION ON ALL MATTERS," IT SUGGESTS
25 TO ME THAT THEY ARE NOT OPEN TO THE SEARCH FOR
26 TRUTH, THAT THEY HAVE A POSITION ALREADY AND THEY
27 MAY THROW A FEW DOLLARS BY WAY OF PUBLIC RELATIONS
28 TO SAY, YEAH, WE HAVE DONE SOMETHING, BUT WE ARE
2812
1 GOING TO SPEND A LOT MORE TELLING YOU WHAT OUR
2 POSITION IS.
3 IF YOU WANT THE TRUTH, YOU WOULDN'T
4 HAVE A POSITION RIGHT UP FRONT.
5 Q. HOW LONG DO YOU THINK THE ISSUE OF
6 TEEN SMOKERS HAS BEEN AROUND, TEENAGE SMOKERS?
7 A. IT HAS CERTAINLY BEEN A MAJOR
8 PHENOMENON OVER THE LAST HALF OF THE 20TH CENTURY.
9 Q. HERE'S ANOTHER ONE YOU LOOKED AT
10 YESTERDAY. TOBACCO INSTITUTE PRESIDENT, 1962. AND
11 I WANT YOU, AND I WANT THE JURY TO TAKE A LOOK AT
12 THIS.
13 GEORGE ALLAN, THE PRESIDENT OF THE
14 TOBACCO INSTITUTE, SENT A TELEGRAM TO THE PRESIDENT
15 OF CBS. I HAVE JUST RECEIVED THE FIRSTHAND
16 DETAILED ACCOUNT OF THE PREVIEW OF CBS REPORTS ON
17 THE TEENAGE SMOKER.
18 SO LET ME STOP.
19 IN 1962, 40, 39 YEARS AGO, WAS TEEN
20 SMOKING ALREADY A CONTROVERSY?
21 A. YES. ALL THROUGH THESE REPORTS,
22 THAT COMES UP VERY LOUD AND CLEAR.
23 Q. YOU SAID, AND OTHERS HAVE SAID,
24 MOST PEOPLE START SMOKING IN THEIR TEENS.
25 WHERE DO YOU GET THAT?
26 A. THERE HAVE BEEN A NUMBER, IN FACT,
27 THE BEST DATA IS FROM CALIFORNIA STUDIES, BECAUSE
28 OF ALL THE PROPOSITION 99 SUPPORTIVE RESEARCH, THE
2813
1 VERY BEST STUDIES ARE IN CALIFORNIA AND THESE ARE
2 STUDIES OF, I BELIEVE, 5 AND 10,000 RANDOMLY
3 SELECTED TEENAGERS ACROSS CALIFORNIA.
4 Q. TAKING INTO ACCOUNT EVEN INDUSTRY
5 DOCUMENTS, EVEN PHILIP MORRIS'S DOCUMENTS, LET'S
6 SAY, ESPECIALLY THEIR OWN DOCUMENTS, IS IT A DONE
7 DEAL AND NO ONE, NO ONE DISPUTES THE FACT THAT THE
8 OVERWHELMING MAJORITY OF PEOPLE START SMOKING WHEN
9 THEY ARE TEENAGERS?
10 A. I WILL THINK EVEN THE CIGARETTE
11 COMPANIES WILL ACKNOWLEDGE THAT, YES, IT'S A DONE
12 DEAL.
13 Q. WAS THE NUMBER YOU WERE GIVING US
14 YESTERDAY, 90 PERCENT?
15 A. YES.
16 Q. SO BACK TO 1962, HE IS TALKING
17 ABOUT THE CBS PROGRAM.
18 "IT AFFORDS A VEHICLE FOR
19 VENTING EXTREME OPINIONS AND
20 PREJUDICES WITHOUT ANY REAL EFFORT TO
21 EXPLORE THE FACTS AND DETERMINE THE
22 MERITS OF THESE POSITIONS. THE SHOW
23 FAILS TO COME TO GRIPS WITH THE BASIC
24 POINT THAT THE CAUSES OF LUNG CANCER
25 ARE STILL UNKNOWN AND THAT EVERY
26 EFFORT SHOULD BE DIRECTED TOWARD

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27 FINDING THESE CAUSES."
28 I DON'T WANT TO TALK ANY MEDICINE
2814
1 WITH YOU, BUT I WANT TO TALK PUBLIC RELATIONS.
2 REMEMBER YESTERDAY WE SHOWED SOME
3 DOCUMENTS WHERE NEWS REPORTS THAT WERE READY TO GO
4 IN THE CAN WERE CHANGED 12 AND 15 TIMES BEFORE THEY
5 WERE RELEASED?
6 A. RIGHT.
7 Q. DO YOU REMEMBER WE SAW SOME
8 DOCUMENTS THAT TALKED ABOUT THE FACT THAT STUFF
9 READY TO GO TO THE PUBLIC WAS WITHDRAWN BECAUSE OF
10 COMPLAINTS FROM THE TOBACCO INDUSTRY?
11 A. RIGHT.
12 Q. IF MR. LEITER'S POINT THIS MORNING
13 THAT A LOT OF MONEY WAS GOING TO RESEARCH, TO FIND
14 OUT WHAT'S REALLY WHAT, IS BANNING MATERIAL FROM
15 THE PUBLIC OR TRYING TO PREVENT THE PUBLIC FROM
16 HEARING MATERIAL IN YOUR VIEW, A WAY OF GETTING TO
17 THE TRUTH?
18 MR. LEITER: OBJECTION, THAT'S
19 ARGUMENTATIVE.
20 THE COURT: SUSTAINED.
21 MR. PIUZE: I APOLOGIZE, IT IS. I
22 WITHDRAW IT.
23 Q BY MR. PIUZE: YOU TALKED ABOUT,
24 WITH ME, YOU HAVE THREE DOCUMENTS UP THERE, SORT OF
25 SURVEY DOCUMENTS OR, I FORGET WHAT THE TERMS IS.
26 WHAT'S THE TERM?
27 A. CONSENSUS.
28 Q. CONSENSUS DOCUMENTS.
2815
1 DO YOU SEE THE LITTLE BLUE BOOK
2 YOU HAVE THERE?
3 A. YES.
4 Q. WE READ ONE PART FROM THERE. DO
5 YOU REMEMBER THAT?
6 A. YEAH.
7 Q. DO YOU HAVE IT?
8 A. I THINK SO.
9 Q. WELL, I AM NOT ASKING YOU TO READ
10 IT RIGHT NOW.
11 YESTERDAY, DURING
12 CROSS-EXAMINATION, SOMEPLACE FROM IN THERE
13 SOMEPLACE, A SENTENCE WAS READ TO YOU WHICH SEEMED
14 TO CONTRADICT YOUR POINT.
15 DO YOU REMEMBER THAT?
16 A. YEAH. THAT'S VERY EASY TO PICK UP
17 AN ISOLATED EVENT RELATED TO PEERS. WE ALL HAVE
18 FRIENDS.
19 Q. BUT YOU REMEMBER THAT A SENTENCE
20 WAS READ OUT OF THERE?
21 A. RIGHT.
22 Q. WHAT'S THE CONCLUSION OF THAT WORK?
23 A. "SUBSTANTIAL CONVERGENT EVIDENCE
24 THAT ADVERTISING AND PROMOTION INCREASES TOBACCO
25 USE BY YOUTHS IS IMPRESSIVE."
26 THERE'S OTHER PARTS, BUT THAT'S THE
27 CORE.
28 "TOBACCO ADVERTISING IS
2816
1 CHARACTERIZED BY IMAGES AND THEMES,
2 ESPECIALLY APPEALING TO ADOLESCENTS.

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SOME ARE APPEALING TO CHILDREN. IN ADDITION, A LARGE PROPORTION OF PROMOTIONAL EXPENDITURES ASSOCIATED USE OF TOBACCO WITH ACTIVITIES AND PRODUCTS THAT ARE ATTRACTIVE TO CHILDREN AND YOUTH."
Q. THAT'S GOOD ENOUGH. I WANT TO GO THROUGH THAT. I AM JUST TRYING TO HIT A COUPLE POINTS AND GET YOU ON AN AIRPLANE. OKAY. YOU ALSO HAD THE SURGEON GENERAL'S REPORT UP THERE; RIGHT?
A. YES.
Q. REMEMBER THAT?
A. YES.
Q. AND IN 199 -- WHAT YEAR IS THAT REPORT THERE?
A. '94.
Q. I DON'T WANT TO START JUST BOUNCING SENTENCES BACK AND FORTH.
DID THE SURGEON GENERAL ACKNOWLEDGE THAT THERE WAS A GROWING BODY OF SCIENTIFIC LITERATURE REPORTED ON YOUNG PEOPLE'S AWARENESS AND ATTITUDES ABOUT CIGARETTE ADVERTISING AND PROMOTIONAL ACTIVITIES, RESEARCH HAS FOCUSED ON THE EFFECTS OF THESE ACTIVITIES AND ON PSYCHOSOCIAL RISK FACTORS FOR BEGINNING TO SMOKE; RIGHT?

2817

A. YES.
Q. HERE'S WHAT I DIDN'T READ TO YOU THE OTHER DAY.
MR. LEITER: CAN I HAVE THE PAGE, PLEASE.
MR. PIUZE: JUST WHAT WE READ YESTERDAY.
MR. LEITER: THANK YOU.
MR. PIUZE: (READING)
"CONSIDERED TOGETHER THESE STUDIES OFFER A COMPELLING ARGUMENT FOR THE MEDIATED RELATIONSHIP OF CIGARETTE ADVERTISING, ADOLESCENT SMOKING, TO DATE, HOWEVER, NO LONGITUDINAL STUDY OR DIRECT RELATIONSHIP OF CIGARETTE ADVERTISING TO SMOKING INITIATION HAS BEEN REPORTED IN THE LITERATURE."
THAT'S WHAT HE READ TO YOU YESTERDAY?
A. RIGHT.
Q. AND THE NEXT SENTENCE. "THIS LACK OF DEFINITIVE LITERATURE DOES NOT IMPLY THAT A CAUSAL RELATIONSHIP DOES NOT EXIST."
A. LOOKING AT ALL OF THE EVIDENCE, EVEN IF THERE'S A SMALL WEAKNESS, THERE PROBABLY STILL IS A CAUSAL RELATIONSHIP.
Q. (READING)
"THIS LACK OF DEFINITIVE LITERATURE DOES NOT IMPLY THAT A

2818

CAUSAL RELATIONSHIP DOES NOT EXIST, RATHER, BETTER QUANTIFICATION OF EXPOSURE EFFECT AND ETIOLOGY IS NEEDED."
HAVE I READ THAT RIGHT?
A. YES.
Q. TWICE YESTERDAY WE HEARD THE TERM

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LONITUDINAL STUDY. LONITUDINAL STUDY WASN'T DEFINED. WHAT'S A LONITUDINAL STUDY?
A. IT IS WHAT THE WORD SAYS IT IS, LONG. THAT IS TO SAY, A STUDY THAT LASTS OVER TIME AND WHERE YOU FOLLOW PEOPLE, CHILDREN, OVER TIME. THEY ALSO SAY THAT TO DO THE PERFECT LONITUDINAL STUDY WOULD BE TOTALLY UNETHICAL. YOU WOULD HAVE A DRACONIAN SOCIETY WHERE I TOOK ALL YOUR FOUR-YEAR-OLDS AND SAID, OKAY, I AM GOING TO SET YOU ASIDE IN AN ENVIRONMENT THAT NOBODY CAN GET TO AND HALF OF YOU ARE GOING TO NEVER SEE ANY CIGARETTE COMMERCIALS AND THE OTHER HALF, I AM GOING TO SHOW YOU SOME CIGARETTE COMMERCIALS EVERY DAY, MAGAZINES, T.V., BILLBOARDS. AND I AM GOING TO FOLLOW YOU, LONGITUDINALLY, FROM 4 UNTIL 24, OR AT LEAST 18 OR 20, AND I WILL SEE HOW MANY OF YOU SMOKE IN EACH GROUP. AND THAT'S YOUR PERSONAL STANDARD LONITUDINAL STUDY. WHAT THE SURGEON GENERAL IS SAYING IS WE CAN'T REALLY DO THAT. BUT IN THE ABSENCE OF THAT, WE HAVE COME PRETTY CLOSE.

2819

NOW, ACTUALLY, ONE OF THE STUDIES I TALKED ABOUT YESTERDAY, NOT CIGARETTES, UP IN QUEBEC, CAME AS CLOSE AS YOU CAN IN A WAY, WITHOUT BEING DRACONIAN. THEY PASSED A LAW, IT AFFECTED SOME OF THE CHILDREN BUT NOT OTHERS, OUT THERE IN THE REAL WORLD.
AND WE LOOK AT THE DIFFERENCE AND WE DIDN'T FOLLOW THEM OVER TIME. IT WOULD HAVE BEEN EVEN BETTER IF WE SAID, LET'S CATCH THESE KIDS BEFORE THE LAW WAS PASSED AND FOLLOW THEM THROUGH UNTIL AFTER.
BUT WE GOT A PRETTY GOOD IDEA BY LOOKING AT THEM AFTERWARDS, TWO VERY DIFFERENT GROUPS OF PEOPLE, NO ADVERTISING FOR ONE, ADVERTISING FOR THE OTHER, BIG DIFFERENCES IN THEIR BEHAVIOR, WITH AND WITHOUT ADVERTISING.
Q. AND THE LAST BIG BOOK YOU GOT UP THERE, I DIDN'T READ FROM DIRECTLY, DO YOU SEE THAT?
A. YES.
Q. WHAT'S THAT?
A. IT'S FROM THE FEDERAL REGISTER, THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOOD AND DRUG ADMINISTRATION, REGULATIONS RESTRICTING THE SALE AND DISTRIBUTION OF CIGARETTES AND SMOKELESS TOBACCO TO PROTECT CHILDREN AND ADOLESCENT, THE FINAL RULE.
SO THIS IS THE END OF A LONG SERIES

2820

OF HEARINGS AND PAPERS.
Q. AND DID THAT POINT ALSO CONCLUDE, CITING BOTH THE SURGEON GENERAL'S REPORT AND THAT BLUE BOOK DOCTORS' REPORT?
A. YEAH, THE HISTORY OF IT IS THAT THESE TWO CAME IN 1994. THIS ONE IN 1996. SO THEY WERE ABLE TO LOOK BACK AT THESE TWO.
Q. (READING)
"ADVERTISING PLAYS A MEDIATED RELATIONSHIP IN ADOLESCENT TOBACCO USE. THE PROPER QUESTION IS NOT IS ADVERTISING THE MOST IMPORTANT

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13 CAUSE OF YOUTH INITIATION, BUT RATHER,
14 DOES THE F.D.A. HAVE A SOLID BODY OF
15 EVIDENCE ESTABLISHING THAT ADVERTISING
16 ENCOURAGES YOUNG PEOPLE'S TOBACCO USE
17 SUCH THAT THE F.D.A. COULD CAUSALLY
18 RESTRICT ADVERTISING. THE ANSWER TO
19 THIS QUESTION IS YES."
20 AND THAT'S A YES?
21 A. YES. THAT'S WHAT THEY CONCLUDED.
22 Q. THAT THE SOLID BODY OF EVIDENCE
23 ESTABLISHES THAT ADVERTISEMENT ENCOURAGES YOUNG
24 PEOPLE'S TOBACCO USE?
25 A. YES.
26 Q. I AM ALMOST DONE.
27 YOU WERE ALSO ASKED ABOUT A STUDY
28 UP IN CANADA AND WE TALKED ABOUT A LITTLE BIT.
2821
1 APPARENTLY YOU WERE ONE OF THE PEOPLE ON THE STUDY.
2 DO YOU REMEMBER THAT?
3 A. YES. I WAS. AND SINCE THIS WAS
4 CANADA'S CONSENSUS STUDY, ALTHOUGH FOCUSED ON A
5 NARROWER TOPIC.
6 Q. YOU WERE, I THINK YOU WERE SHOWN
7 ONE PORTION OF IT AND IT WAS TAKEN AWAY AND YOU
8 WANTED TO MAKE A COUPLE COMMENTS, BUT IT DIDN'T
9 HAPPEN. DO YOU RECALL THAT?
10 A. YEAH, I SAW THE WORDS MARKETING
11 MIX, JUST AS IT WAS BEING PULLED AWAY. WE WERE
12 TALKING ABOUT PEER INFLUENCE AND WHAT WE NEVER GOT
13 TO WAS THE MARKETING MIX, THE MARKETING PART, THE
14 ADVERTISING PART.
15 Q. WAS THERE A NUMBER FOR THIS?
16 MR. LEITER: I DON'T KNOW.
17 Q BY MR. PIUZE: WELL, HERE, I AM
18 ONLY GOING TO TAKE A COUPLE MINUTES, LESS THAN FIVE
19 MINUTES ON THIS, BUT LET'S JUST SHOW A COUPLE OF
20 THINGS ON THE NEXT PAGE OR TWO, PLEASE.
21 THIS IS PAGE 28.
22 I AM GOING TO READ IT, JUST ASK YOU
23 IF IT'S TRUE.
24 "212 TOBACCO ADVERTISING AND
25 CONSUMPTION INVESTIGATIONS CONCLUDED
26 THAT ADVERTISING INCREASED TOBACCO
27 SALES."
28 A. THAT IS CORRECT.
2822
1 THAT'S WHY I SAY IT'S THE CANADIAN
2 VERSION OF THE CONSENSUS STUDY, A LOT OF STUDIES
3 HAVE GONE INTO THIS.
4 Q. (READING)
5 "SINCE BRAND SWITCHING IS
6 NOT WIDE-SPREAD INTO THE HIGH BRAND
7 LOYALTIES, TARGETING BRAND SWITCHING
8 MAKES LITTLE SENSE. TYPICAL TARGET
9 MARKETS FOR TOBACCO PRODUCTS ARE YOUNG
10 MALES 15 TO 25, YOUNG FEMALE'S, 15 TO
11 25, LATENT QUITTERS AND
12 DOWN-SWITCHERS."
13 AND WHATEVER A DOWN-SWITCHER IS, I
14 DON'T WANT TO TAKE THE TIME TO DISCUSS IT. BUT
15 TRUE STATEMENT THERE?
16 A. YES.
17 Q. (READING)

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"IN THE LAST TEN YEARS -- IF
THE LAST TEN YEARS HAVE TAUGHT US
ANYTHING, IT IS THAT THE INDUSTRY IS
DOMINATED BY COMPANIES WHO RESPOND
MOST EFFECTIVELY TO THE NEEDS OF
YOUNGER SMOKERS. OUR EFFORTS ON THESE
BRANDS WILL REMAIN ON MAINTAINING
THEIR RELEVANCE TO SMOKERS AND THE
YOUNGER GROUPS IN SPITE OF POOR SHARE
OF PERFORMANCE THEY MAY DEVELOP AMONG
OLDER SMOKERS."

2823

A. THERE IS NOT MUCH OF A BOARDER WHEN
IT COMES TO THIS ISSUE, CANADA AND THE UNITED
STATES. THE INDUSTRY SEES THINGS THE SAME WAY,
THEY NEED YOUNG PEOPLE WHO ARE STARTERS AND TARGET
THEM.
Q. GEAR UP TO THE STARTER SMOKERS, NOT
THE PEOPLE WHO HAVE BEEN DOING IT A LONG TIME?
A. THEY SAY EVEN, WHO CARES ABOUT THE
OLDER GUYS.
Q. (READING)
"BRANDING IS AN IMPORTANT
MARKETING TOOL. A BRAND REPRESENTS
COLOR, NAME, SIGN, SYMBOL OR ANY
COMBINATION OF THESE USED TO
DISTINGUISH ONE COMPETING PRODUCT FROM
ANOTHER. MOST IMPORTANT, HOWEVER, IS
A BRAND'S IMAGE. PACKAGING IS OFTEN
DESIGNED TO REINFORCE BRAND IMAGE. IN
FACT, BRAND IMAGING IS THE MOST
IMPORTANT PURPOSE OF PACKAGING."
DO YOU AGREE WITH THAT?
A. YES.
Q. I AM NOT GOING TO GO TO THE REST OF
THIS. I AM GOING TO GO TO YOU.
DID YOU HAVE SOME ROLE IN CANADIAN
GOVERNMENT POLICY HAVING TO DO WITH THE PACKAGING
AND BRANDING OF TOBACCO IN CANADA THAT EXISTS NOW?
A. YES, I BELIEVE I DID. I WAS THE

2824

EARLIEST TO SUGGEST THE APPROACH THAT'S BEING TAKEN
NOW AND STUDIED THE DOCUMENT AND ITS EFFECTIVENESS.
Q. DID THE STUDY HAVE TO DO WITH CAPRI
CIGARETTES?
A. THE EARLY PART DID. I WAS SITTING
IN PENNSYLVANIA AND I NEEDED TO MAKE SURE THAT MY
APPROACH WAS CORRECT. SO I USED ONE AMERICAN BRAND
AND THEN MOVED THAT APPROACH INTO CANADA AS WELL.
Q. OKAY. DID IT START WITH CAPRI
CIGARETTES?
A. YES.
Q. DO YOU HAVE SOME UP THERE?
A. DO I HAVE SOME, YES.
Q. I BOUGHT THEM TODAY.
SO, PINK AND YELLOW AND PURPLE;
RIGHT? YES?
A. YES.
Q. PLEASE.
A. YES.
MR. LEITER: I AM OBJECTING ON RELEVANCE.
THE COURT: WELL, JUST ILLUSTRATES WHAT
HE HAS TESTIFIED TO YESTERDAY. IT WON'T BE

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ADMITTED INTO EVIDENCE.
MR. PIUZE: NO, IT WILL NOT BE, NOT
OFFERED.
Q BY MR. PIUZE: ANYWAY, IS THAT
WHAT THE PACKAGE OF CAPRI LOOKS LIKE?
A. YES, IT DOES.

2825

Q. DID THIS HAVE SOMETHING TO DO WITH
THE STUDY YOU DID WHICH WAS ULTIMATELY, IN SOME
WAY, TRANSFERRED TO CANADA?
A. YES, IT DID.
Q. JUST VERY BRIEFLY, EXPLAIN THE
SIGNIFICANCE OF THAT PICTURE.
A. WELL, THIS IS THE WAY CAPRI IS
ADVERTISED, WITH A FAIRLY GLAMOROUS YOUNG WOMAN AND
SO THE QUESTION WE ASKED OUR SUBJECTS WAS, IF THIS
WOMAN WAS, YOU KNOW, HOLDING UP THIS PACKET AND
THIS BRAND, WOULD SHE BE ACCURATELY CONVEYING
HERSELF, WHO SHE WAS. IS THIS THE APPROPRIATE
BRAND IMAGE FOR THIS WOMAN, GIVEN ALL THE
ADVERTISING, THE BRAND EQUITY THAT'S BEEN BUILT UP
IN THIS PRODUCT.
Q. WHAT WAS THE ANSWER?
A. ABSOLUTELY. ON A FIVE POINT SCALE
WHERE FIVE IS THIS WAS JUST PERFECT FOR THIS WOMAN,
IT WAS FIVE OR CLOSE TO IT.
Q. WHAT ABOUT HER DAD?
A. WE USUALLY GET A CHUCKLE OUT OF,
AND THAT'S PART OF THE POINT OF THIS. THIS
FISHERMAN COMES FROM A STROH'S BEER AD AND WE ASKED
THE SAME QUESTION THEN OF PEOPLE AND SAY, WELL, IF
THIS MAN WAS SMOKING THIS CIGARETTE AND SHOW IT
AROUND, WOULD HE BE CONVEYING SOMETHING ACCURATE
ABOUT WHO HE IS, WHAT HE STANDS FOR. AND IN
ADDITION TO A CHUCKLE USUALLY ON THIS, ONE TO FIVE

2826

SAY, NO, NOT AT ALL, CLOSE TO ONE.
Q. OKAY, SO --
A. SO --
Q. -- HANG ON A SECOND. I AM GOING TO
PUT THESE AWAY, BUT HANG ON A SECOND.
FOR CAPRI CIGARETTES WITH THAT
PACKAGE, SHE GETS A FIVE AND HE GETS A ONE?
A. OR CLOSE TO IT, YES.
Q. WHEN THAT PACKAGE WAS CHANGED, WHEN
THAT PACKAGE WAS CHANGED TO PLAIN WHITE, WHAT DID
SHE DO?
A. WHEN WE SHOW THESE, AGAIN, TO
PEOPLE, AND WE SAID, DOES THIS REALLY REPRESENT WHO
SHE IS, THREE, RIGHT IN THE MIDDLE OF THE SCALE.
NOT GOOD, NOT BAD. SHE WOULD BE OKAY, BUT NOT
GREAT, IN TERMS OF GETTING HER TO BE ABLE TO
PORTRAY WHO SHE WAS TO OTHERS AND WHAT SHE STOOD
FOR AND WHAT SHE SYMBOLIZED.
Q. WHAT DID THE FISHERMAN GET?
A. THREE. NOT TOO BAD FOR HIM AND NO
CHUCKLES ANY MORE. I GUESS IT'S OKAY FOR HIM, NOT
TERRIBLE.
Q. WE ARE HERE TALKING ABOUT CIGARETTE
ADVERTISING AND IT'S EFFECTS. WHAT DOES IT MEAN
THAT WHEN YOU TAKE THAT DESIGN OFF OF A CIGARETTE
PACK, THAT SHE SLIDES FROM FIVE TO THREE AND HE
CLIMBS UP FROM ONE TO THREE, WHAT DOES THAT MEAN TO

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28 YOU, FROM MARKETING RESEARCH STANDPOINT?
2827
1 A. IT MEANS, IN TODAY'S WORLD, IF YOU
2 GO BACK, MARKETING IS WORKING VERY WELL,
3 ADVERTISING IS WORKING VERY WELL AS IT IS SUPPOSED
4 TO. IT IS NICHE MARKETING.
5 THIS CAPRI CIGARETTE IS TARGETING
6 TO ONE GROUP, THAT'S YOUNG WOMEN. THEY DON'T WANT
7 THOSE OLD MEN. AND IT'S BEING VERY EFFECTIVE. IT
8 WORKS. IT'S A FIVE VERSUS ONE IN TODAY'S WORLD.
9 OUR SECOND STEP WAS, WHAT IF, IN
10 ANOTHER WORLD, THEY WERE BLANK, YOU WOULD, IN A
11 SENSE, ELIMINATE A STRONG MARKETING TOOL, MAKE IT
12 THAT MUCH LESS CAPABLE FOR PEOPLE TO CONVEY, THINK
13 OF THOSE YOUNG KIDS HOLDING, IT'S A BADGE PRODUCT,
14 THIS IS WHO I AM, THIS IS WHAT I STAND FOR, I AM
15 NOT THOSE CHESTERFIELDS MY DAD, MOM SMOKED,
16 MR. BOEKEN, THAT'S NOT ME. I AM MARLBORO.
17 NOW, IF EVERYONE IS HOLDING UP
18 WHITE, A LITTLE HARDER TO DO. THAT WAS WHAT THE
19 THOUGHT OF THE CANADIAN GOVERNMENT WAS IN FUNDING
20 THIS.
21 Q. NOW, THAT'S WHERE I AM GOING TO
22 JUMP RIGHT NOW FOR THE LAST ISSUE I AM GOING TO
23 DISCUSS WITH YOU.
24 UP IN CANADA, WAS IT DISCUSSED THAT
25 MAYBE ALL CIGARETTES SHOULDN'T BE SOLD WITH
26 MARLBORO MAN AND HORSES AND TOUGH GUYS OR VIRGINIA
27 SLIMS OR CAPRIS, BUT THEY SHOULD ALL BE SOLD IN A
28 PLAIN WHITE PACKAGE?
2828
1 A. YES. THAT WAS, IN FACT, THE
2 INITIAL DISCUSSION. IT WENT FURTHER THAN THAT.
3 Q. WAS THE BOTTOM LINE THAT IF THEY
4 WERE SORT OF IN PLAIN WHITE WRAPPERS, THAT NOT SO
5 MANY PEOPLE WOULD BUY THE CIGARETTES ANY MORE?
6 A. YES.
7 Q. WAS THAT THE GOAL?
8 A. ABSOLUTELY. AND ESPECIALLY OF
9 INTEREST TO KIDS WHO CARE MOST OF ALL ABOUT THE
10 BADGE VALUE. THIS IS WHO I AM AS I HOLD UP THIS
11 PACK.
12 Q. IS BENSON & HEDGES A BRAND THAT'S
13 SOLD UP IN CANADA?
14 A. YES, IT IS.
15 Q. WHAT'S THIS ONE?
16 A. NOW, THIS IS THE ACTUAL PACKAGE, AS
17 IT WAS SOLD, AT THE TIME THE STUDY WAS DONE. AS
18 YOU CAN SEE, THEY DO HAVE STRONGER WARNINGS TO
19 BEGIN WITH, RIGHT ON THE FACE OF THE PACKAGE.
20 Q. OKAY.
21 THERE'S A MODIFICATION, WHAT'S ON
22 THE OUTSIDE OF THAT PACKAGE?
23 A. WELL, I HAD COME ACROSS THIS SYMBOL
24 AND CONVINCED MY COLLEAGUES THAT WE COULD GO ONE
25 STEP FURTHER. I CONVINCED MY COLLEAGUES THAT WE
26 COULD GO ONE STEP FURTHER, THAT IN addition TO
27 TESTING JUST THE PLAIN WHITE PACKAGE, WHY DON'T WE
28 TEST THIS.
2829
1 MR. LEITER: I NEED TO INTERRUPT, YOUR
2 HONOR. I THINK WE MY NEED TO APPROACH.
3 THE COURT: JUST FOR A MOMENT, SO I CAN

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4 UNDERSTAND THE RELEVANCE HERE.
5
6 (A DISCUSSION WAS HELD IN
7 CHAMBERS, NOT REPORTED.)
8
9 Q BY MR. PIUZE: YOU HAVE BEEN HERE
10 A REAL LONG TIME. WANT TO GO HOME?
11 A. I WOULD HAVE BROUGHT MORE SUITS IF
12 I HAD KNOWN.
13 Q. DO YOU WANT TO GO HOME?
14 A. YES.
15 Q. GOODBYE.
16 A. OKAY. THANK YOU.
17 THE COURT: RECROSS.
18 MR. LEITER: JUST A COUPLE QUESTIONS,
19 YOUR HONOR.
20
21 RECROSS-EXAMINATION
22
23 BY MR. LEITER:
24 Q. TO BE CLEAR, DOCTOR, IS IT YOUR
25 TESTIMONY THAT MR. BOEKEN BEGAN TO SMOKE, BEGAN TO
26 SMOKE, BECAUSE OF THE LABELING ON THE MARLBORO
27 PACKET, THE COLORS AND THE LOGO?
28 A. THE PACKAGE IS PART OF WHAT I
2830
1 REFERRED TO AT AN INTEGRATED MARKETING
2 COMMUNICATIONS SYSTEM. INTEGRATED MARKETING
3 COMMUNICATIONS REFERS TO THE INTEGRATION OF ALL
4 FACETS OF MARKETING AT ITS MOST EFFECTIVE. AND IT
5 REALLY IS WITH MARLBORO AT ITS MOST EFFECTIVE.
6 MARLBORO ADVERTISING, IN STORE, INSIGNIA,
7 PROMOTIONAL MATERIALS, PACKAGING, ALL TIE TOGETHER.
8 Q. OKAY. SO BACK IN 1954, WHEN
9 MR. BOEKEN FIRST PICKED UP THE BUTT FROM HIS
10 PARENTS' ASHTRAY, YOUR TESTIMONY IS THE MAIN REASON
11 HE DID THAT WAS PACKAGING AND ADVERTISING?
12 A. MY GUESS WAS HE WAS WISHING HE
13 COULD PICK UP MARLBOROS. HE DIDN'T HAVE THE MONEY.
14 Q. HE WAS WISHING, WHEN HE FIRST
15 PICKED UP THOSE BUTTS AT AGE 10 THAT HE COULD PICK
16 UP A MARLBORO?
17 A. THAT WAS AS GOOD AS HE COULD DO AT
18 10. BUT HE WISHED HE COULD PICK UP A MARLBORO.
19 Q. SHOW ME WHERE IN HIS DEPOSITION HE
20 SAYS THAT?
21 A. I AM THE SOCIAL SCIENTIST, I DON'T
22 THINK HE CAN ANALYZE HIS BEHAVIOR AS WELL AS --
23 Q. AS WELL AS YOU CAN?
24 A. THAT'S RIGHT, ESPECIALLY FROM A
25 DISTANCE.
26 Q. WHAT KIND OF PACKAGES DID THESE
27 COME IN?
28 A. YOU KNOW, THIS IS SO MISLEADING A
2831
1 TABLE THAT IT WOULD TAKE DAYS TO TELL YOU WHY THIS
2 IS A REALLY APPARENT SIMILARITY.
3 HEROIN AT AGE 26, A PERSON AT AGE
4 26 HAS NOTHING TO DO WITH A PERSON AT 14. WE KNOW,
5 ANYBODY HERE KNOWS THAT YOUR FRIENDS AT AGE 14, AT
6 THAT VULNERABLE STAGE ARE A DIFFERENT, YOUR
7 INTERACTION WITH THEM IS VERY DIFFERENT.
8 FRIENDS AT 20 -- WE HAVE FRIENDS

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9 THROUGH LIFE, YOU ARE ABSOLUTELY RIGHT. YOU FIND
10 YOURSELF IN THE PRESENCE OF FRIENDS. THAT'S THE
11 SIMILARITY. YOU ARE GOING TO HAVE FRIENDS,
12 HOPEFULLY, ALL THROUGH YOUR LIFE AND YOU ARE GOING
13 TO BE IN CONTACT WITH THEM.
14 BUT THAT'S A PRETTY SPURIOUS EVENT.
15 THE MOTIVATIONAL FORCE HERE AT 24, 26 AND 14 IS
16 VERY DIFFERENT.
17 THE REASONS ONE SMOKES HEROIN, THE
18 REASONS ONE GETS INTO MARIJUANA ARE FAR DIFFERENT
19 AND BECAUSE THERE IS NO ADVERTISING THERE. THAT
20 TAKES WHOLE STUDIES. AND TO PUT THIS UP IN ONE
21 TABLE DOES A DISSERVICE TO EFFORTS TO UNDERSTAND
22 ANYONE.
23 Q. THAT'S YOUR FAIR AND IMPARTIAL
24 ANSWER TO THE QUESTION?
25 MY QUESTION WAS, WHAT PACKAGES DO
26 THESE COME IN?
27 A. THAT WAS, I THINK, A FACETIOUS
28 QUESTION AND I AM SAYING THAT THAT DOES A
2832
1 DISSERVICE TO UNDERSTANDING.
2 THERE'S HUGE FEDERAL EFFORTS, HUGE,
3 TO UNDERSTAND THE HUGE PROBLEMS OF DRUGS. AND TO
4 SUBSUME THIS UNDER ONE TABLE SAYING FRIENDS ARE
5 EVERYWHERE, THIS IS A TREMENDOUS DISSERVICE TO A
6 HUGE PROBLEM WE HAVE.
7 THERE ARE FORCES GUIDING PEOPLE TO
8 HEROIN AND MARIJUANA THAT ARE COMPLEX. AND TO SAY
9 THERE IS NO ADVERTISING, WELL, WE DON'T UNDERSTAND
10 WHAT'S HAPPENING THERE AND IT IS NOT FAIR TO JUST
11 JUXTAPOSE THOSE.
12 Q. JUST SO WE ARE CLEAR, DOCTOR, YOUR
13 OPINION IS, MR. BOEKEN CHOSE TO TAKE THESE RISKS
14 HAS NOTHING TO DO WITH THE CHOICE TO TAKE THAT
15 RISK, THAT'S YOUR OPINION?
16 A. I AM SAYING THAT THESE DECISIONS
17 ARE SO MULTI-FACETED THAT WE CANNOT, IN A BLINK,
18 LOOK AT THAT TABLE AND SAY WE UNDERSTAND VERY MUCH.
19 Q. ALL THESE DECISIONS ARE SO MULTI-
20 FACETED, ISN'T THAT RIGHT?
21 A. MULTI-FACETED, SOME INFLUENCED BY
22 ADVERTISING AND OTHERS NO.
23 MR. LEITER: NOTHING FURTHER.
24 MR. PIUZE: NO.
25 THE COURT: SIR, YOU MAY STEP DOWN.
26 YOU ARE EXCUSED.
27 THE WITNESS: THANK YOU.
28 THE COURT: YES, SIR.
2833
1 YES, SIR, IF YOU WOULD PLEASE STEP
2 FORWARD.
3 MR. PIUZE: THIS IS DOCTOR SAMUEL HAMMAR.
4 THE COURT: RIGHT IN THIS AREA NEXT TO
5 THE WITNESS STAND. REMAIN STANDING, FACE MY CLERK,
6 MR. GODDERZ, WHO IS STANDING RIGHT THERE, RAISE
7 YOUR RIGHT HAND TO BE SWORN AS A WITNESS IN THIS
8 MATTER.
9
10
11 SAMUEL HAMMAR, M.D.,
12 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN
13 AND TESTIFIED AS FOLLOWS:

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THE CLERK: YOU DO SOLEMNLY STATE THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.
THE WITNESS: YES.
THE CLERK: HAVE A SEAT.
AND FOR OUR RECORD, IF YOU COULD STATE YOUR FIRST AND LAST NAME.
THE WITNESS: SAMUEL HAMMAR, H-A-M-M-A-R.

DIRECT EXAMINATION

BY MR. PIUZE:
Q. HI.
A. HI.

2834

Q. DID YOU FLY DOWN HERE IN ORDER TO TESTIFY AT MY REQUEST IN THIS CASE?
A. YES.
Q. FROM WHERE, PLEASE.
A. SEATTLE.
Q. WHAT DO YOU DO IN SEATTLE?
A. PATHOLOGIST.
Q. WHAT'S A PATHOLOGIST?
A. A PATHOLOGIST IS A TYPE OF MEDICAL DOCTOR THAT PROVIDES INFORMATION TO CLINICAL DOCTORS SO THAT THEY CAN ACCURATELY AND HOPEFULLY HELP TREAT PATIENTS.
Q. HOW LONG HAVE YOU BEEN A PATHOLOGIST?
A. 27 YEARS.
Q. PATHOLOGIST IS A MEDICAL DOCTOR?
A. YES.
Q. WHY DON'T YOU PLEASE TELL US A LITTLE BIT ABOUT YOUR EDUCATIONAL BACKGROUND. START AT COLLEGE, GIVE US APPROXIMATE YEARS AND WHERE YOU WERE, PLEASE.
A. OKAY. I WENT TO UNDERGRADUATE COLLEGE AT EASTERN WASHINGTON STATE UNIVERSITY FROM 1961 TO 1965 AND GRADUATED WITH A B. A. DEGREE IN CHEMISTRY.
I THEN ATTENDED THE UNIVERSITY OF WASHINGTON, SCHOOL OF MEDICINE IN SEATTLE FROM 1965 TO 1969 AND GRADUATED WITH AN M.D. DEGREE.

2835

I DID A STRAIGHT PATHOLOGY INTERNSHIP AT THE UNIVERSITY HOSPITAL IN SEATTLE FROM JULY OF 1969 THROUGH JUNE OF 1970.
I THEN ENTERED THE UNIVERSITY OF WASHINGTON AFFILIATED RESIDENCY PROGRAM IN PATHOLOGY AND WAS A PATHOLOGY RESIDENT FROM JULY OF 1970 THROUGH SEPTEMBER OF 1973.
Q. DONE ANY TEACHING?
A. I HAVE. MY FIRST JOB WAS AT THE UNIVERSITY OF UTAH, SCHOOL OF MEDICINE, WHERE I WAS AN ASSISTANT PROFESSOR IN THE DEPARTMENT OF PATHOLOGY. I SPENT ABOUT, ALMOST TWO YEARS THERE FROM OCTOBER OF 1973 TO AUGUST OF 1975. I TAUGHT MEDICAL STUDENTS, PATHOLOGY RESIDENTS AND FELLOWS.
I THEN LEFT THE UNIVERSITY OF UTAH AND TOOK A JOB BACK IN SEATTLE AT THE VIRGINIA MASON MEDICAL CENTER, WHICH IS VERY SIMILAR TO THE MAYO CLINIC, AND WAS A PATHOLOGIST THERE ON THE

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19 STAFF FROM 19, OCTOBER OF 1975, OR SEPTEMBER OF
20 1975, THROUGH JANUARY OF 1989. I TAUGHT PATHOLOGY
21 RESIDENTS THERE. I ALSO HELPED TEACH INTERNAL
22 MEDICINE RESIDENTS AND SURGICAL RESIDENTS.
23 MYSELF AND ANOTHER PATHOLOGIST
24 INTERESTED IN LUNG DISEASE ALSO PUT ON A COURSE FOR
25 THE AMERICAN SOCIETY OF CLINICAL PATHOLOGY FOR TEN
26 YEARS IN WHICH WE GAVE TWO COURSES A YEAR TEACHING
27 OTHER PATHOLOGISTS LUNG PATHOLOGY.
28 AND THEN IN FEBRUARY OF 1989, I
2836
1 MOVED TO BRIMMERTON, WASHINGTON, WHICH IS A SMALL
2 CITY ACROSS PUGET SOUND FROM SEATTLE ABOUT 15 MILES
3 BY FERRY BOAT, SET UP A NEW LABORATORY IN
4 BRIMMERTON CALLED DIAGNOSTIC SPECIALTIES LABORATORY
5 AND WENT INTO PRACTICE WITH A COUPLE OF FRIENDS OF
6 MINE. AND I HAVE BEEN THERE SINCE.
7 Q. WHAT'S BRIMMERTON, WASHINGTON LIKE?
8 WE DON'T KNOW MUCH ABOUT FERRY BOATS DOWN HERE.
9 A. WELL, BRIMMERTON, WASHINGTON IS A
10 VERY WORKING PERSON'S TOWN. THERE IS A LOT OF
11 PEOPLE THERE HAVE WORKED AT THE PUGET SOUND NAVAL
12 SHIPYARD WHICH IS RIGHT TO THE LEFT OF WHERE THE
13 FERRY DOCKS EVERY MORNING FROM SEATTLE.
14 THE FOURTH GENERATION OF PEOPLE WHO
15 LIVE IN THE BRIMMERTON AREA HAVE WORKED AT THE
16 SHIPYARD. THERE'S ALSO A VERY HEAVY MILITARY
17 PRESENCE IN THE BRIMMERTON AREAS. THERE'S THE
18 VANGER SUBMARINE BASE. THERE'S ALSO SOME OTHER
19 MILITARY INSTALLATIONS AROUND BRIMMERTON. SO IT'S
20 A VERY ACTIVE WORKING COMMUNITY WITH A GREAT NUMBER
21 OF PEOPLE HAVING WORKED AT THE SHIPYARD.
22 Q. SINCE 1980 IN PRIVATE, ARE YOU IN
23 PRIVATE PRACTICE IN BRIMMERTON?
24 A. I AM.
25 Q. PRIVATE PRACTICE AS OPPOSED TO
26 ACADEMICS?
27 A. YES.
28 Q. SINCE 1980 IN PRIVATE PRACTICE IN
2837
1 BRIMMERTON, DO YOU GET TO SEE -- WELL, DO YOU
2 TYPICALLY SEE THE PEOPLE?
3 A. I DON'T REALLY SEE THE PEOPLE VERY
4 OFTEN. ALTHOUGH SOMETIMES THE SURGEONS WILL ASK ME
5 TO GO INTO THE OPERATING ROOM AND TO ASK THEM,
6 ESPECIALLY IN CASES OF A TYPE OF CANCER CALLED
7 MESOTHELIOMA, OR TO BIOPSY A PERSON, USUALLY I DO
8 NOT SEE THE PATIENTS THEMSELVES.
9 Q. USUALLY, WHAT DO YOU SEE?
10 A. WHAT I SEE IS TISSUE FROM PATIENTS
11 AND THAT'S MY JOB IS TO EVALUATE THAT TISSUE FIRST
12 BY LOOKING AT IT WITH MY OWN EYES AND DESCRIBING IT
13 AND THEN MAKING SECTIONS OF THE TISSUE SPECIMENS
14 THAT WILL BE PUT INTO AN AUTOPSY TISSUE PROCESSOR
15 SO WE CAN MAKE WHAT ARE CALL SLIDES OF THE TISSUE
16 SECTIONS.
17 THOSE ARE STAINED WITH SOME DYES
18 THAT I LOOK AT THROUGH A MICROSCOPE. AND BY
19 LOOKING AT THOSE SLIDES, I CAN TELL IF THERE'S
20 ANYTHING WRONG WITH THE TISSUE, AND IF SO, WHAT IS
21 WRONG WITH IT AND WHAT THE DIAGNOSIS IS. AND THAT
22 INFORMATION IS THEN TRANSMITTED BACK TO THE
23 CLINICAL DOCTOR, SURGEON, INTERNIST, FAMILY DOCTOR,

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WHO SENT ME THE SPECIMEN. AND I TELL THEM WHAT I
OBSERVED AND THEY WILL BASE THEIR TREATMENT ON MY
REPORT.
Q. OKAY. SO OVER THE COURSE OF THE
LAST 20 PLUS YEARS, HAVE YOU SEEN TISSUE SPECIMENS
2838
ON SLIDES FROM PEOPLE IN THE BRIMMERTON AREA WHO
HAD LUNG CANCER?
A. EXTREMELY HIGH NUMBER OF CASES,
YES.
Q. WHY DO YOU SAY AN EXTREMELY HIGH
NUMBER?
A. WELL, IT TURNS OUT THAT THERE'S TWO
THINGS IN BRIMMERTON THAT POTENTIALLY RESULT IN
VERY HIGH INCIDENCE OF LUNG CANCERS. THE FIRST,
OBVIOUSLY, IS CIGARETTE SMOKING. IT'S A VERY
ACTIVE WORKING COMMUNITY WHERE A VERY HIGH
PERCENTAGE OF PEOPLE SMOKE.
I HAPPEN TO BE THE CHAIRMAN OF THE
CANCER COMMITTEE AT THE HOSPITAL IN BRIMMERTON AND
I LOOK AT ALL THESE STATISTICS FROM WESTERN
WASHINGTON EVERY YEAR WITH RESPECT TO WHAT THE
INCIDENTS OF CANCER IS, VARIOUS TYPES, AND KITSAP
COUNTY WHERE BRIMMERTON IS LOCATED VERSUS THE OTHER
COUNTY.
IT TURNS OUT THAT WE HAVE ABOUT A
FIVE TO SEVEN PERCENT HIGHER INCIDENCE OF LUNG
CANCER IN KITSAP, K-I-T-S-A-P, COUNTY, THAN ANY
OTHER COUNTY IN WESTERN WASHINGTON, INCLUDING KING
COUNTY WHERE SEATTLE IS. AND THAT IS PRIMARILY
RELATED TO THE VERY HIGH INCIDENCE OF CIGARETTE
SMOKING. AND THEN THERE'S ONE OTHER FACTOR THAT
COMES INTO PLAY AND THAT IS A SIGNIFICANT NUMBER OF
PEOPLE HAVE BEEN EXPOSED TO ASBESTOS WHO HAVE
2839
RESIDED IN THAT COUNTY, WHO GET LUNG CANCER, THE
MAJORITY OF WHOM HAVE, ALSO, UNFORTUNATELY, BEEN
CIGARETTE SMOKERS.
Q. WHAT IS, I GUESS IF IT'S A
SHIPYARD, I GUESS, I KNOW THIS, BUT THE JURY
PROBABLY DOESN'T, IF THERE'S A SHIPYARD AROUND, IS
THERE A LIKELIHOOD THAT THERE MAY BE MORE ASBESTOS
DISEASES?
A. THERE IS. NOT ONLY A LIKELIHOOD
BUT THERE, IN FACT, REALLY IS.
THERE'S A VERY HIGH INCIDENCE OF A
VERY RARE TYPE OF CANCER CAUSED BY ASBESTOS CALLED
MESOTHELIOMA. IT'S A VERY HIGH INCIDENCE OF LUNG
CANCER, WHICH IN THE SHIPYARD WORKERS, IS FREELY
CONTRIBUTED TO BOTH BY ASBESTOS AND CIGARETTE SMOKE
THAT ACT TOGETHER TO CAUSE A VERY HIGH INCIDENCE OF
LUNG CANCER.
Q. THANKS.
LET'S PUT THE ASBESTOS ASIDE TO THE
EXTENT WE CAN.
WHAT IS THERE ABOUT BRIMMERTON, THE
DEMOGRAPHICS THERE, THE SOCIOECONOMICS THERE, WHO
LIVES THERE, WHO WORKS THERE, ASIDE FROM THE
SHIPYARD ASPECT, THAT HAS TO DO WITH LUNG CANCER?
A. THE DEMOGRAPHICS AND WHAT IT HAS TO
DO WITH WOULD BE CIGARETTE SMOKING. AND IT'S
BASICALLY A COMMUNITY WHERE THERE'S A VERY HIGH
INTENSITY OF THAT.

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2840
1 FOR EXAMPLE, IN THREE OF THE LAST
2 FIVE YEARS AT HARRISON MEMORIAL HOSPITAL, THERE
3 WERE MORE WOMEN HOSPITALIZED FOR LUNG CANCER
4 SURGERY THAN THERE WERE MEN.
5 I HAVE NEVER SEEN THAT BEFORE IN MY
6 LIFE.
7 AND EVERY ONE OF THOSE WOMEN,
8 EXCEPT ONE, THAT I KNOW OF, WAS A CIGARETTE SMOKER.
9 AND THAT'S THE BASIC FACTS. AND
10 THE WOMEN IN BRIMMERTON, AT LEAST FROM MY
11 OBSERVATION AND WHAT I SEE IN OUR OWN LABORATORY,
12 HAVE CONTINUED TO KEEP SMOKING AND THE MEN HAVE
13 STARTED TO DECREASE THEIR SMOKING HABITS.
14 Q. THANKS.
15 LET ME COME BACK ONE STEP FROM
16 THAT.
17 WHY, IF YOU HAVE AN OPINION, AND I
18 DON'T WANT YOU TO STRETCH IF YOU DON'T, BUT WHY IS
19 THAT A HEAVY SMOKING AREA?
20 A. WHAT I THINK IT IS DUE TO IS
21 PROBABLY JUST TRADITION, FAMILY TRADITION, PARENTS
22 SMOKED, KIDS SMOKE.
23 Q. NOW, HAVE YOU WRITTEN ABOUT LUNG
24 CANCER?
25 A. YES.
26 Q. STARTING WHEN?
27 A. STARTING PROBABLY WHEN I WAS A
28 PATHOLOGIST AT VIRGINIA MASON WHICH WOULD HAVE
2841
1 BEGUN IN ABOUT 1975, IN THAT AREA.
2 Q. SINCE 1975, HAVE YOU FREQUENTLY
3 WRITTEN ABOUT LUNG CANCER?
4 A. YES.
5 Q. HOW MANY TIMES DO YOU THINK?
6 A. PROBABLY A TOTAL OF SINCE 1975, I'D
7 SAY, 50, MAYBE 60 TIMES.
8 Q. WHERE DO YOU WRITE THESE ARTICLES?
9 A. I HAVE WRITTEN ARTICLES IN WHAT ARE
10 CALLED PEER REVIEW JOURNALS THAT ARE PUBLISHED IN
11 VARIOUS TYPES OF MEDICAL JOURNALS AND I HAVE ALSO
12 WRITTEN BOOK CHAPTERS ON LUNG CANCER.
13 Q. HOW MANY BOOK CHAPTERS?
14 A. I HAVE WRITTEN A CHAPTER IN A BOOK
15 I AM A CO-EDITOR OF, AND WE HAVE HAD THE SECOND
16 EDITION, SO THAT WOULD BE TWO CHAPTERS IN THAT
17 BOOK. I HAVE ALSO WRITTEN A CHAPTER IN ANOTHER
18 BOOK I AM A CO-EDITOR OF CALLED "PULMONARY
19 PATHOLOGY TUMORS." SO IT WOULD BE THREE CHAPTERS,
20 SPECIFICALLY DEALING WITH ALL ASPECTS OF LUNG
21 CANCER. AND I HAVE WRITTEN SOME OTHER CHAPTERS
22 THAT HAVE DEALT, FOR EXAMPLE, WITH THE
23 IMMUNOHISTOCHEMICAL FEATURES OF LUNG CANCER, WHICH
24 IS KIND OF AN INTERESTING AREA RIGHT NOW THAT IS
25 USED FOR A DIAGNOSTIC PURPOSE.
26 Q. I THINK WE BETTER GET A DEFINITION
27 OF THAT BEFORE LUNCH AND NOT AFTER.
28 IMMUNOHISTOCHEMICAL, THAT'S A
2842
1 MOUTHFUL. WHAT DOES THAT MEAN?
2 A. IT TURNS OUT NOW THAT THERE ARE
3 TECHNIQUES TO BE ABLE TO TELL ONE CANCER FROM
4 ANOTHER CANCER. AND THE REASON THEY EXIST IS

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5 BECAUSE IT IS SOMETIMES HARD TO TELL ONE CANCER
6 FROM ANOTHER BECAUSE THE CANCER CELLS THEMSELVES
7 LOOK SIMILAR.
8 FOR EXAMPLE, YOU CAN HAVE A PRIMARY
9 LUNG CANCER THAT CAN LOOK ALMOST IDENTICAL TO A
10 CANCER, OF, SAY, OCCURRING IN YOUR COLON, AND IF
11 YOU USE THESE IMMUNOHISTOCHEMICAL TECHNIQUES WHICH
12 REALLY REFER TO MAKING ANTIBODIES AGAINST
13 SUBSTANCES THAT EITHER ON THE SURFACE OF CELLS OR
14 INSIDE CELLS, THAT THESE CANCERS WILL HAVE
15 DIFFERENT PATTERNS.
16 FOR EXAMPLE, A PRIMARY LUNG
17 ADENOCARCINOMA WILL EXPRESS A SUBTYPE OF KERATAN
18 AND KERATAN IS KIND OF WHAT YOUR HAIR IS MADE OUT
19 OF AND WHAT YOUR DANDRUFF IS. BUT IN CELLS IT IS
20 THE CYTOSKELETON OF THESE CELLS.
21 AND IT TURNS OUT THAT THE CANCER
22 CELLS IN A PRIMARY LUNG ADENOCARCINOMA PRODUCES
23 CYTOKERATAN 7, WHEREAS THE CANCER CELLS IN THE CELL
24 PRODUCE A SUBSTANCE CALLED CYTOKERATAN 20.
25 CANCER CELLS IN THE LUNGS OF AN
26 ADENOCARCINOMA WILL EXPRESS WHAT'S CALLED A
27 TRANSCRIPTION FACTOR AND THAT'S A FACTOR THAT CODES
28 OR TRANSCRIBES THE DNA IN THE NUCLEUS OF THE CELL
2843
1 TO TELL THE CYTOPLASM OF THE CELL WHAT TYPE OF
2 PROTEINS TO MAKE. AND THAT SUBSTANCE IS CALLED
3 THYROID TRANSCRIPTION FACTOR 1.
4 THAT IS SEEN IN ABOUT 60 TO 75
5 PERCENT OF PRIMARY LUNG ADENOCARCARCINOMAS, IS
6 NEVER SEEN IN ANY ADENOCARCINOMA OF THE G.I. TRACT.
7 SO THIS CAN SOMETIME BE HELPFUL IN
8 LETTING DOCTORS KNOW IF THEY ARE DEALING WITH
9 PRIMARY LUNG CANCER OR A TUMOR THAT HAS SPREAD FROM
10 ANOTHER SIDE OF THE BODY TO THE LUNG.
11 Q. DID I OR MY OFFICE, AT LEAST, SEND
12 YOU SLIDES OF TISSUE THAT WERE TAKEN OUT OF RICHARD
13 BOEKEN'S LUNG?
14 A. YES.
15 Q. AND DID YOU TAKE A LOOK AT THOSE
16 SLIDES?
17 A. I DID.
18 Q. IN ORDER TO DETERMINE WHAT TYPE OF
19 CANCER HE HAD?
20 A. YES.
21 Q. IS THIS SOMETHING YOU HAVE DONE
22 THOUSANDS OF TIMES BEFORE?
23 A. A LOT OF TIMES, YES.
24 Q. DID YOU DO IT?
25 A. I DID IT.
26 Q. WHAT DID YOU FIGURE OUT?
27 A. MR. BOEKEN HAS AN ADENOCARCINOMA OF
28 HIS LUNG THAT OCCURRED IN THE RIGHT UPPER LOBE.
2844
1 Q. DO YOU KNOW WHO DR. GELLER IS?
2 A. THAT'S A PATHOLOGIST AT THE,
3 CEDARS-SINAI HOSPITAL PATHOLOGIST.
4 Q. DID DR. GELLER SAY HE HAD AN
5 ADENOCARCINOMA OF THE RIGHT UPPER LOBE OF THE LUNG?
6 A. YES.
7 Q. DID YOU AGREE WITH DR. GELLER?
8 A. YES.
9 Q. WAS DR. GELLER THE CHIEF

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10 PATHOLOGIST OVER AT CEDARS-SINAI HOSPITAL?
11 A. YES.
12 Q. HE CALLED IT RIGHT?
13 A. HE DID.
14 Q. WHAT WAS MR. BOEKEN'S
15 ADENOCARCINOMA OF THE RIGHT UPPER LOBE OF THE LUNG
16 CAUSED BY?
17 A. CIGARETTE SMOKE.
18 Q. PRETTY SURE ABOUT THAT?
19 A. YES.
20 Q. DO YOU KNOW WHO ALLAN FEINGOLD IS?
21 A. YES.
22 Q. WHO?
23 A. HE'S A PULMONOLOGIST IN MIAMI,
24 FLORIDA.
25 Q. HOW DO YOU KNOW HIM?
26 A. HE AND I HAVE REVIEWED SIMILAR
27 CASES OR CASES OF THE SAME PATIENT THAT HAVE BEEN
28 IN LITIGATION, WITH RESPECT TO TOBACCO SMOKE BEING
2845
1 A CAUSE OF A CANCER.
2 Q. YOU MENTIONED -- HE WAS HERE, HE
3 MENTIONED A DR. SALDANA, I THINK, MARIO, BUT I AM
4 NOT POSITIVE?
5 A. YEAH, MARIO SALDANA.
6 Q. DO YOU KNOW HIM?
7 A. VERY WELL.
8 Q. WHO IS THAT?
9 A. HE IS A PATHOLOGIST IN THE MIAMI
10 AREA. HE IS A VERY WELL-KNOWN PULMONARY
11 PATHOLOGIST. HE HAS WRITTEN A TEXTBOOK ON LUNG
12 PATHOLOGY.
13 I INVITED MARIO TO CO-CHAIR A
14 SESSION OF A MEETING I AM GOING TO HAVE IN SEATTLE
15 ON AUGUST 15TH THROUGH THE 17TH ON LUNG PATHOLOGY.
16 HE AND I HAVE BEEN INTERESTED IN MANY OF THE SAME
17 TYPES OF THINGS.
18 Q. HAVE YOU HAD A CHANCE TO READ
19 THROUGH DR. FEINGOLD'S DEPOSITION?
20 A. I HAVE.
21 Q. AND YOU SAW WHAT HE AND DR. SALDANA
22 HAD TO SAY ABOUT THE TUMOR?
23 A. I DID.
24 Q. ADENOCARCINOMA OF THE LUNG?
25 A. RIGHT.
26 Q. YOU AGREE WITH THAT?
27 A. I HAVE.
28 Q. NOW, HERE'S WHAT I WOULD LIKE TO
2846
1 DO.
2 DO YOU HAVE SLIDES THAT WE CAN SHOW
3 THE JURY SO THAT THEY CAN SEE WHAT YOU WERE LOOKING
4 AT UNDER THE MICROSCOPE?
5 A. YES.
6 Q. LET'S USE ME AS AN EXAMPLE. LET'S
7 USE ME, NOT THE JURY, AS AN EXAMPLE.
8 IF I LOOK AT THESE SLIDES WITHOUT
9 YOUR GUIDANCE, WOULD I HAVE ANY CLUE, I HAVE NEVER
10 HAD A DAY OF MEDICAL SCHOOL, WOULD I HAVE ANY CLUE
11 IN THE WORD WHAT IT SHOWED?
12 A. I DOUBT IT.
13 Q. IF YOU SAT THERE AND GUIDED ME AND
14 USED ALL OF THE WORDS, AND LET ME ALONE FOR AN HOUR

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OR SO TO THINK ABOUT IT, WOULD I HAVE A CLUE?
A. I THINK YOU WOULD HAVE A CLUE,
YEAH.
I THINK YOU COULD UNDERSTAND THE
BASIC IDEA OF WHAT CANCER IS ABOUT AND WHAT THE
CELLS ARE ABOUT.
Q. DO YOU HAVE AN IDEA OF WHAT
PERCENTAGE OF ADENOCARCINOMA OF THE LUNG -- FIRST
OF ALL, DOES ADENOCARCINOMA HAVE TO BE OF THE LUNG?
A. NO.
Q. WHAT PERCENTAGE OF ADENOCARCINOMA
OF THE LUNG ARE CAUSED BY SMOKING?
A. WHAT I SEE IN A REAL LIFE PRACTICE
IN BRIMMERTON, WHERE I WORK, FOR MEN AND WOMEN, IS
2847
THAT AT LEAST 90 PERCENT ARE CAUSED BY CIGARETTE
SMOKE.
THE ONLY ADENOCARCINOMA THAT I SEE
THAT IS NOT IN A CIGARETTE SMOKER WOULD BE WHAT'S
CALLED A PNEUMONIC FORM OF A BRONCHIOLOAVELOAR CELL
CARCINOMA THAT USUALLY OCCURS FOR REASONS I DON'T
KNOW IN YOUNG WOMEN. AND THAT WOULD BE ABOUT THE
ONLY TYPE.
EVERY OTHER CASE, OR THE MAJORITY
OF THE OTHER CASES, BASICALLY, OCCUR IN WOMEN. AND
LIKE MOST ADENOCARCINOMA OF THE LUNG, THEY SHOW
VARIABLE PATTERNS WHICH MEANS THAT THE CANCER CAN
LOOK LIKE ONE AREA, IT CAN HAVE A CERTAIN PATTERN
THAT YOU CAN RECOGNIZE. IN ANOTHER AREA IT WILL
HAVE A DIFFERENT PATTERN WHERE THE CELLS WILL LOOK
DIFFERENT, AND YET IN ANOTHER AREA, EVEN A
DIFFERENT PATTERN. AND THAT WOULD BE THE MOST
COMMON TYPE OF ADENOCARCINOMA THAT I SEE IN BOTH
MEN AND WOMEN.
Q. IS AN ADENOCARCINOMA OF THE LUNG
THAT IS NOT RELATED TO SMOKING AN EXTREME RARITY?
A. YES.
MR. PIUZE: YOUR HONOR WITH THREE SECONDS
LEFT, I THINK THAT IS ALL I HAVE GOT THIS MORNING.
THE COURT: THANK YOU, COUNSEL, FOR BEING
MINDFUL OF OUR TIME.
LADIES AND GENTLEMEN, WE ARE GOING
TO TAKE OUR BREAK AND WE WILL BE BACK PROMPTLY AT
2848
1:30 THIS AFTERNOON TO BEGIN.

(AT 12 NOON, THE LUNCH
RECESS WAS TAKEN TO
1:30 P.M. OF THE SAME DAY.)

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